



Towards a Framework for Regulating the Sustainability of Mine Hospitals: A Legal Perspective

By

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Abstract

Mining sites are often located in rural and remote communities where healthcare services are either unaffordable or unavailable to mine employees. To address this problem, mining companies may elect to establish and manage mine hospitals to provide vital healthcare services to their employees and the surrounding communities.

Mining companies often have the financial capacity to establish state-of-the-art facilities with medical equipment and technology required for the diagnosis and treatment of diseases, including diseases prevalent in the mining industry. The role of mine hospitals extends beyond the development of health infrastructure and the provision of healthcare services. Mine hospitals contribute to the economic development of mine-affected communities. Mine hospitals create employment opportunities that increase disposable income in mine-affected communities and boost local economic activities. Additionally, mining companies can promote local procurement by purchasing goods and services needed for their mine hospitals from local suppliers.

Notwithstanding the positive socio-economic impacts of mine hospitals in mine-affected communities, the closure or ownership and management transfer of mine hospitals can have adverse effects on mine-affected communities. These adverse effects include the poor management of mine hospitals, the termination or suspension of healthcare services, and job losses. Therefore, responsible mine hospital closure and transfer practices must be implemented by mining companies to prevent or minimise these adverse effects.

This minor dissertation examines the history, role, and function of mine hospitals in mine-affected communities in South Africa. It evaluates the positive and negative (specifically mine hospital closures and ownership and management transfers) impacts of mine hospitals on mine-affected communities. Based on the role and function of mine hospitals and their impacts on mine-affected communities, the dissertation recommends that certain aspects of mine hospitals are governed differently from general private hospitals and standard workplace-based systems. It proposes specific legislative requirements and procedures for the establishment, ownership and management transfer; and closure of mine hospitals. Additionally, the dissertation makes recommendations on the roles of the government, mining companies, and mine-affected communities in the establishment, transfer, and closure processes.

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Table of Abbreviations

ch	Chapter
CSR	Corporate Social Responsibility
CT	Computerized Tomography
DMRE	Department of Mineral Resources and Energy
DoH	Department of Health
GG	Government Gazette
GN	Government Notice
MRI	Magnetic Resonance Imaging
MHSA	Mine Health and Safety Act 29 of 1996
MPRDA	Mineral and Petroleum Resources Development Act 28 of 2002
NHA	National Health Act 61 of 2003
reg(s)	Regulation(s)
s(s)	Section(s)
SLP	Social and Labour Plan
SLO	Social License to Operate

Chapter 1: Introduction

1. Introduction

Mining operations often occur in rural and remote communities where healthcare services are either unaffordable or unavailable to mine employees.¹ To resolve this problem, mining companies may choose to (and have often done so in the past)² establish and manage mine hospitals to provide healthcare services to their employees, their employees' dependents, and surrounding communities.³

Mining companies that manage large mining operations often have the financial capacity to establish state-of-the-art healthcare facilities with medical equipment and technology required for the treatment of diseases, including diseases prevalent in the mining sector.⁴ The role of mine hospitals extends beyond the development of health infrastructure and the provision of healthcare services in mine-affected communities.⁵ Mine hospitals create

¹ L. Marais, J. Cloete & S. Denoon-Stevens 'Informal settlements and mine development: Reflections from South Africa's periphery' (2018) 118 *Journal of the Southern African Institute of Mining and Metallurgy* 10 at 1103-1103; and Jeebhay M & Jacobs B 'Occupational Health Services in South Africa' in Crisp N & Nthuli A (eds) *South African Health Review* 5 ed (1999) at 257-276.

² The last available statistic was 66 mine hospitals in 1997; and Department of Health 'NHI and Workplace Healthcare' available at <http://ipasa.co.za/Downloads/Policy%20and%20Reports%20-%20General%20Health/NHI/policy%20brief%2015/IMSA%20NHI%20Policy%20Brief%2015%20NHI%20and%20Workplace%20Healthcare%20vF.pdf> at 1-16, accessed 31 December 2019.

³ For the purpose of this research, 'surrounding communities', 'local communities' and 'mine-affected communities' are used interchangeably to refer to communities that are directly or indirectly affected by mining and mining-related activities; Zeenat Dasoo 'An analysis of the employment of medical practitioners in South Africa: keynote address presented by Ms Zeenat Dasoo at the MMPA 16th Annual Congress, August 2013' (2014) 20 *Occupational Health Southern Africa* at 24-27.

⁴ TB in the Mining Sector in Southern Africa 'Consolidated Report: Review of existing legislation and regulations for mine health and safety in the ten countries' available at <https://www.timssa.co.za/Documents/Studies/Legislation%20and%20Regulations%20Review%20-%20Health%20Focus.pdf> at 27-29, accessed on 17 May 2019; Deborah Spicer 'The big mine-hospital debate' available at <http://www.miningweekly.com>, accessed 3 March 2019.

⁵ Republic of South Africa: Department of Health 'Human Resources for Health South Africa: HRH Strategy for the Health Sector: 2012/13 – 2016/17' (2011) at 37 & 60; African Institute for Health and Leadership Development Percy Mahlathi & Jabu Dlamini 'Minimum Data Sets for Human Resources for Health and the Surgical Workforce in South Africa's Health System – A rapid analysis of stock and migration' African Institute for Health and Leadership Development online September 2015, available at https://www.who.int/workforcealliance/031616south_africa_case_studiesweb.pdf?ua=1 at 4, accessed 22 January 2020; Valentine Bogdetsky, Karybek Ibraev & Jyldyz Abdyrakhmanova 'Mining Industry as a Source of Economic Growth in Kyrgyzstan' available at <http://documents.worldbank.org/curated/en/562191468047367090/Mining-industry-as-a-source-of-economic-growth-in-Kyrgyzstan> at 38-39, accessed 22 January 2020; and Hospital Council of Northern & Central California 'Economic & Health Impact of Hospitals' available at https://www.hospitalcouncil.org/sites/main/files/file-attachments/hospitalc_eir-report_fmtk.pdf?1488242114 at 2-15 & 49, accessed on 22 January 2020.

employment opportunities that increase disposable income in mine-affected communities and boost local economic activities.⁶ Mining companies can also potentially promote local procurement by purchasing goods and services needed for mine hospitals from local suppliers.⁷

Notwithstanding the positive socio-economic impacts of mine hospitals in mine-affected communities, the closure of a mine hospital or the transfer in the ownership and management of a mine hospital can have adverse effects on mine-affected communities.⁸ These adverse effects include the new owners' ineffective management of the mine hospitals, the termination or suspension of healthcare delivery, and job losses.⁹ Therefore, mining companies have the responsibility to implement mine hospital closure and ownership and management transfer practices that have minimal adverse effects on mine-affected communities.

This dissertation examines the history, role, and function of mine hospitals in mine-affected communities in South Africa. It evaluates the positive and negative (specifically mine hospital closures and ownership and management transfers) effects of mine hospitals on mine-affected communities.

⁶ Republic of South Africa: Department of Health 'Human Resources for Health South Africa: HRH Strategy for the Health Sector: 2012/13 – 2016/17' (2011) at 37 & 60; *African Institute for Health and Leadership Development* Percy Mahlathi & Jabu Dlamini 'Minimum Date Sets for Human Resources for Health and the Surgical Workforce in South Africa's Health System – A rapid analysis of stock and migration' African Institute for Health and Leadership Development online September 2015, available at https://www.who.int/workforcealliance/031616south_africa_case_studiesweb.pdf?ua=1 at 4, accessed 22 January 2020; Valentine Bogdetsky, Karybek Ibraev & Jyldyz Abdyrakhmanova 'Mining Industry as a Source of Economic Growth in Kyrgyzstan' at 38-39; and Hospital Council of Northern & Central California 'Economic & Health Impact of Hospitals' available at https://www.hospitalcouncil.org/sites/main/files/file-attachments/hospitalc_eir-report_fmtk.pdf?1488242114 at 2-15 & 49, accessed on 22 January 2020.

⁷ *World Health Organization* Tammy Boyce and Chris Brown 'Economic and Social Impacts and Benefits of Health Systems' World Health Organization online 2019, available at http://www.euro.who.int/__data/assets/pdf_file/0006/395718/Economic-Social-Impact-Health-FINAL.pdf?ua=1 at 16-19, accessed 22 January 2020; and Foundation for Healthy Communities & New Hampshire Hospital Association 'The Economic Impact of Hospital Systems in New Hampshire' available at https://www.healthynh.com/images/PDFfiles/publications/Economic_Impact_State_Report_2014_FINAL.pdf at 3-22, accessed 22 January 2020.

⁸ For the purpose of this research, 'mine hospital ownership and management transfer' is given a specific meaning. It refers to the situation where a mining company transfers its ownership, control, funding, management and administration of a mine hospital to another legal person.

⁹ Richard E. Doelker, Jr. Bonnie C. Bedics 'Impact of Rural Hospital Closings on the Community' (1989) 6 *Social Work* 34 at 541-543; *National Center for Rural Health Works* Fred C. Eilrich, Gerald A. Doeksen & Cheryl F. St. Clair et al 'The Economic Impact of Recent Hospital Closures on Rural Communities' National Center for Rural Health Works online July 2015, available at <http://ruralhealthworks.org/wp-content/uploads/2018/04/Impact-of-HospitalClosure-August-2015.pdf> at 1-9, accessed 8 November 2019; and L. Marais, J. Cloete & S. Denoon-Stevens (2018) *The Journal of the Southern Institute of Mining and Metallurgy* at 1103-111.

Based on the role and function of mine hospitals and their impacts on mine-affected communities, the dissertation recommends that certain aspects of mine hospitals are governed differently from general private hospitals and standard workplace-based systems. It proposes specific legislative requirements and procedures for the establishment, ownership and management transfer; and closure of mine hospitals. Additionally, the dissertation makes recommendations on the roles of the government, mining companies, and mine-affected communities in the establishment, transfer, and closure and processes.

2. Research Background

Since the start of mining on an industrial scale in the 19th century, South African miners have been exposed to high levels of risk to their health.¹⁰ These health hazards include dust exposures from blasting operations, excessive noises from drilling, and exposures to harmful chemicals.¹¹ In the long-term, more disabilities, diseases, and deaths in the mining sector are associated with health hazards than with safety hazards.¹² The record of ill-health in the mining industry is often worse than that of other economic sectors such as construction and manufacturing.¹³ Therefore, the mining sector is one of the most hazardous sectors in South Africa.¹⁴

Mine health and safety legislation gradually developed in response to incidents involving multiple injuries or death.¹⁵ Safety risks manifest more clearly in the work environment than health risks, therefore, legislation often skews towards addressing safety hazards.¹⁶ However, in the long-term more disabilities and deaths are associated with health hazards than safety hazards.¹⁷ The period of latency between a mine employee's exposure to a

¹⁰ M.A. Hermanus (2007) 107 *The Journal of The Southern African Institute of Mining and Metallurgy* 531-537.

¹¹ A.M. Donoghue 'Occupational health hazards in mining: an overview' (2004) 54 *Occupational Medicine* 5 at 283.

¹² M.A. Hermanus (2007) 107 *The Journal of The Southern African Institute of Mining and Metallurgy* at 537.

¹³ J. Bonsu, W. van Dyk & J-P. Franzidis et al 'A systemic study of mining accident causality: an analysis of 91 accidents from a platinum mine in South Africa' (2018) 117 *Journal of the Southern African Institute of Mining and Metallurgy* 1 at 59-65; and M.A. Hermanus (2007) 107 *The Journal of The Southern African Institute of Mining and Metallurgy* 531-537.

¹⁴ N. Coulson, P.F. Stewart & S. Saeed 'South African mineworkers' perspectives on the right to refuse dangerous work and the constraints to worker self-regulation' (2019) 119 *Journal of the Southern African Institute of Mining and Metallurgy* 1 at 21-22; and M.A. Hermanus (2007) 107 *Journal of The Southern African Institute of Mining and Metallurgy* 531-537.

¹⁵ M.A. Hermanus (2007) 107 *The Journal of The Southern African Institute of Mining and Metallurgy* 531-537.

¹⁶ M.A. Hermanus 107 *The Journal of The Southern African Institute of Mining and Metallurgy* 531-537.

¹⁷ JP de V van Niekerk 'The health of miner(s)' (2013) 103 *South African Medical Journal* 1 at 3-4; and M.A. Hermanus (2007) 107 *The Journal of The Southern African Institute of Mining and Metallurgy* 531-537.

health hazard and the manifestation of a disease is one of the primary reasons why health risks are underestimated or unrecognised.¹⁸

In 1994, former president of South Africa Nelson Mandela established a commission to inquire into health and safety in the mining sector.¹⁹ The commission, entitled ‘The Leon Commission of Inquiry’ (the Commission), was mandated to examine the state and quality of occupational health services in South Africa and specifically in the mining sector.²⁰ The Commission identified shortfalls in the legal framework for health and safety in the mining sector.²¹ It found that the legal framework focused predominately on safety issues within the mining sector with little emphasis on the promotion of the occupational health status of mine employees.²² Consequently, questions were raised over how the legal framework can best regulate occupational health in the mining sector.²³

The Commission recommended the formulation of a comprehensive legal framework providing for workplaces free of health hazards.²⁴ It also recommended that the government promulgates regulations and protective measures to promote the health of employees.²⁵ The recommendations of the Commission and consultations amongst the relevant stakeholders (such as the government, mining companies, and mine employee representatives) led to the establishment of a legal framework for occupational health services in the mining sector.²⁶ The primary legislation governing occupational health in the mining sector is the Mine Health and

¹⁸ B.M. Eiter, C.L. Kosmoski & B.P. Connor ‘Defining hazard from the mine worker’s perspective’ (2016) 68 *Mining Engineering* 11 at 50-54; and M.A. Hermanus (2007) 107 *The Journal of The Southern African Institute of Mining and Metallurgy* 531-537.

¹⁹ C.J. Badenhorst ‘Seamlessly integrating occupational health into business’ (2004) *The Southern African Institute of Mining and Metallurgy* at 54.

²⁰ J.M. Stewart and S.M. Malatji ‘Development of the MOSH Leading Practice Adoption System – a science-based system for managing behaviour and change’ (2018) 118 *The Journal of the Southern African Institute of Mining and Metallurgy* 3 at 259.

²¹ C.J. Badenhorst (2004) *The Southern African Institute of Mining and Metallurgy* at 54.

²² C.J. Badenhorst (2004) *The Southern African Institute of Mining and Metallurgy* at 54.

²³ M.A. Hermanus ‘Occupational health and safety in mining – status, new developments and concerns’ (2007) 107 *The Journal of The Southern African Institute of Mining and Metallurgy* 8 at 537.

²⁴ Mine Health and Safety Council ‘South African Mining Industry Journey to Zero Harm 2003-2013’ available at http://www.sacollierymanagers.org.za/docs/MHSC_-_Journey_to_Zero_Harm_A5_Handbookprintdraft_v5_Final_Final.pdf at 14-16, accessed 28 December 2019.

²⁵ J.M. Stewart and S.M. Malatji (2018) 118 *The Journal of the Southern African Institute of Mining and Metallurgy* at 259.

²⁶ The legal framework includes the Occupational Health and Safety Act 85 of 1993, Occupational Diseases in Mines and Works Act 78 of 1973 and Compensation for Occupational Injuries and Diseases Act 130 of 1993; and Mine Health and Safety Council ‘South African Mining Industry Journey to Zero Harm 2003-2013’ available at http://www.sacollierymanagers.org.za/docs/MHSC_-_Journey_to_Zero_Harm_A5_Handbookprintdraft_v5_Final_Final.pdf at 14-16, accessed 28 December 2019.

Safety Act (MHSA).²⁷ The MHSA ensures a ‘healthy and safe working environment’ for employees in the mining sector.²⁸ Additionally, the Act establishes guidelines, norms, and standards applicable to the relevant stakeholders in the mining sector.²⁹ There is also other occupational health legislation that was established by the legislature to govern occupational health issues in the mining sector and other economic sectors.³⁰

The health hazards associated with mining (such as chemical, dust, air, and noise pollution) are not limited to mine employees.³¹ These hazards also affect the dependants of mine employees and the communities surrounding mining operations.³² Consequently, all those affected by mining operations must have access to healthcare services.³³ The right to have access to healthcare services is one of the fundamental components of the human rights entrenched in the South African Constitution.³⁴ Unfortunately, members of mine-affected communities often cannot access healthcare services.³⁵ This is because South Africa’s public healthcare system is overburdened and there is a shortage of health infrastructure, healthcare

²⁷ Mine Health and Safety Act 29 of 1996.

²⁸ MHSA; and Department of Health ‘NHI and Workplace Healthcare’ available at <http://ipasa.co.za/Downloads/Policy%20and%20Reports%20-%20General%20Health/NHI/policy%20brief%2015/IMSA%20NHI%20Policy%20Brief%2015%20NHI%20and%20Workplace%20Healthcare%20vF.pdf> at 1-16, accessed 31 December 2019.

²⁹ MHSA; and Department of Health ‘NHI and Workplace Healthcare’ available at <http://ipasa.co.za/Downloads/Policy%20and%20Reports%20-%20General%20Health/NHI/policy%20brief%2015/IMSA%20NHI%20Policy%20Brief%2015%20NHI%20and%20Workplace%20Healthcare%20vF.pdf> at 1-16, accessed 31 December 2019.

³⁰ See Annexure 1 to this dissertation for a table depicting legislation pertaining to occupational healthcare provision and compensation.

³¹ Jan von der Goltz & Prabhat ‘Mines: The local wealth and health effects of mineral mining in developing countries’ (2019) 139 *Journal of Development Economics* at 1-16; and *Regional Network for Equity in Health in East and Southern Africa* Training and Research Support Centre ‘Mining and health: A Health Literacy Module’ online September 2018 at 5, available at <https://www.equinetafrica.org/sites/default/files/uploads/documents/HL%20module%20Mining%20and%20Health%202018.pdf> accessed 31 December 2019.

³² See Annexure 2 to this dissertation for a table depicting the health hazards and impacts associated with different types of mining activity.

³³ Jan von der Goltz & Prabhat (2019) 139 *Journal of Development Economics* at 1-16; and *Regional Network for Equity in Health in East and Southern Africa* Training and Research Support Centre ‘Mining and health: A Health Literacy Module’ online September 2018 at 5, available at <https://www.equinetafrica.org/sites/default/files/uploads/documents/HL%20module%20Mining%20and%20Health%202018.pdf> accessed 31 December 2019.

³⁴ See section 27 of the Constitution of the Republic of South Africa, 1996; *Soobramoney v Minister of Health (KwaZulu-Natal)* 1998 (1) SA 765 (CC); *Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC); and *Minister of Health v Treatment Action Campaign (No 2)* 2002 (5) SA 721 (CC).

³⁵ Mine communities fall within the groups of middle to low-income families that cannot access healthcare services; and Bronwyn Harris, Jane Goudge, John E. Ataguba et al ‘Inequalities in access to health care in South Africa’ (2011) 32 *Journal of Public Health Policy* at 103.

professionals, and medical equipment and technology.³⁶ Further, members of mine-affected communities often cannot afford the costs of private healthcare.³⁷ Additional access barriers include vast distances to available public healthcare facilities and associated high travel costs.³⁸

The establishment of mine hospitals by mining companies eases the burden on the public healthcare system by contributing to the development of health infrastructure.³⁹ Mine hospitals usually extend the provision of healthcare services to the dependants of mine employees and surrounding communities.⁴⁰ Further, the healthcare services offered at mine hospitals are often more affordable than at other private hospitals and more accessible than public hospitals located in urban areas.⁴¹ In many instances, the mining companies that establish mine hospitals have the financial capacity to develop the medical infrastructure to treat a range of medical conditions.⁴² In January 2019, the North-West provincial government announced its commitment to addressing the healthcare challenges in mine-affected communities within the province.⁴³ The provincial government met with representatives of mining companies such as Impala Platinum and Sibanye-Stillwater.⁴⁴ The provincial government appealed to the mining companies to provide healthcare facilities to patients in the province because the public hospital, Job Shimankane Thabane hospital, is overburdened.⁴⁵

Mine hospitals also have a socio-economic impact on the surrounding communities. The regulatory framework for mining companies in South Africa provides the mandate for mining companies to contribute to the social and economic development of mine-affected

³⁶ S van Straten, C Stannard, J Bulabula et al 'A third of patients treated at a tertiary-level surgical service could be treated at a secondary-level facility' 107 *South African Medical Journal* 9 at 788.

³⁷ Bronwyn Harris, Jane Goudge, John E. Ataguba et al (2011) 32 *Journal of Public Health Policy* at 103.

³⁸ Bronwyn Harris, Jane Goudge, John E. Ataguba et al (2011) 32 *Journal of Public Health Policy* at 103.

³⁹ Deborah Spicer 'The big mine-hospital debate' available at <https://www.engineeringnews.co.za/article/the-big-minehospital-debate-2003-05-05>, accessed on 30 November 2019.

⁴⁰ The extension of healthcare to dependants and surrounding communities is discussed in more detail in ch 2 and section 2 of ch 4; Deborah Spicer 'The big mine-hospital debate'.

⁴¹ Deborah Spicer 'The big mine-hospital debate'.

⁴² Deborah Spicer 'The big mine-hospital debate'.

⁴³ South African Government 'North West Health addresses health challenges in mining communities' online 18 January 2019, available at <https://www.gov.za/speeches/mining-communities-18-jan-2019-0000> accessed 10 November 2019.

⁴⁴ South African Government 'North West Health addresses health challenges in mining communities' online 18 January 2019, available at <https://www.gov.za/speeches/mining-communities-18-jan-2019-0000> accessed 10 November 2019.

⁴⁵ South African Government 'North West Health addresses health challenges in mining communities' online 18 January 2019, available at <https://www.gov.za/speeches/mining-communities-18-jan-2019-0000> accessed 10 November 2019.

communities.⁴⁶ Development efforts of mining companies extend beyond the creation of health infrastructure and the provision of healthcare services in mine-affected communities.⁴⁷ Mine hospitals also create employment opportunities for local community members that increase disposable income in mine-affected communities and boost local economic activities.⁴⁸ Mine hospitals can also potentially create procurement opportunities for local businesses.⁴⁹ For example, mining companies may contract with local construction businesses to build hospitals or employ community members as hospital staff.

Therefore, mine hospitals offer an alternative healthcare delivery model independent of the traditional public and private healthcare systems and accompanying socio-economic benefits specifically for mine-affected communities.

⁴⁶ This regulatory framework includes the mandatory Social and Labour Plan in terms of the Mineral and Petroleum Resources Development Act 28 of 2002 and the Broad-Based Socio-Economic Empowerment Charter (i.e. the Mining Charter); Christian M. Rogerson 'Mining enterprise, regulatory frameworks and local economic development in South Africa' (2011) 5 *African Journal of Business Management* 35 at 13373-13382; and Sihlangu Ngobese *Examining the socio-economic impact of mining on the livelihoods of Amajuba District Mining Communities* (LLM thesis, University of Kwazulu-Natal, 2015) at 44-55.

⁴⁷ Republic of South Africa Department of Health 'Human Resources for Health South Africa: HRH Strategy for the Health Sector: 2012/13 – 2016/17' available at <https://www.gov.za/documents/human-resources-health-south-africa-hrh-strategy-health-sector-201213-201617> at 30 & 67, accessed 22 January 2020; African Institute for Health and Leadership Development Percy Mahlathi & Jabu Dlamini 'Minimum Data Sets for Human Resources for Health and the Surgical Workforce in South Africa's Health System – A rapid analysis of stock and migration' African Institute for Health and Leadership Development online September 2015, available at https://www.who.int/workforcealliance/031616south_africa_case_studiesweb.pdf?ua=1 at 4, accessed 22 January 2020; Valentine Bogdetsky, Karybek Ibraev & Jyldyz Abdyrakhmanova 'Mining Industry as a Source of Economic Growth in Kyrgyzstan' at 38-39; and Hospital Council of Northern & Central California 'Economic & Health Impact of Hospitals' available at https://www.hospitalcouncil.org/sites/main/files/file-attachments/hospitalc_eir-report_fmtk.pdf?1488242114 at 2-15 & 49, accessed on 22 January 2020.

⁴⁸ Republic of South Africa Department of Health 'Human Resources for Health South Africa: HRH Strategy for the Health Sector: 2012/13 – 2016/17' available at <https://www.gov.za/documents/human-resources-health-south-africa-hrh-strategy-health-sector-201213-201617> at 30 & 67, accessed 22 January 2020; African Institute for Health and Leadership Development Percy Mahlathi & Jabu Dlamini 'Minimum Data Sets for Human Resources for Health and the Surgical Workforce in South Africa's Health System – A rapid analysis of stock and migration' African Institute for Health and Leadership Development online September 2015, available at https://www.who.int/workforcealliance/031616south_africa_case_studiesweb.pdf?ua=1 at 4, accessed 22 January 2020; Valentine Bogdetsky, Karybek Ibraev & Jyldyz Abdyrakhmanova 'Mining Industry as a Source of Economic Growth in Kyrgyzstan' at 38-39; and Hospital Council of Northern & Central California 'Economic & Health Impact of Hospitals' available at https://www.hospitalcouncil.org/sites/main/files/file-attachments/hospitalc_eir-report_fmtk.pdf?1488242114 at 2-15 & 49, accessed on 22 January 2020.

⁴⁹ World Health Organization Tammy Boyce and Chris Brown 'Economic and Social Impacts and Benefits of Health Systems' World Health Organization online 2019, available at http://www.euro.who.int/__data/assets/pdf_file/0006/395718/Economic-Social-Impact-Health-FINAL.pdf?ua=1 at 16-19, accessed 22 January 2020; and Foundation for Healthy Communities & New Hampshire Hospital Association 'The Economic Impact of Hospital Systems in New Hampshire' available at https://www.healthynh.com/images/PDFfiles/publications/Economic_Impact_State_Report_2014_FINAL.pdf at 3-22, accessed 22 January 2020.

Despite the potential contribution that mine hospitals can make to the socio-economic development of mine-affected communities, mining companies may elect to transfer the ownership and management of mine hospitals to other entities or close mine hospitals for specific reasons.⁵⁰ These reasons include the conclusion of mining projects leading to financial constraints.⁵¹ The closure or transfer of ownership and management of mine hospitals can have negative socio-economic consequences for mine-affected communities, such as the poor management of mine hospitals by the new owners, the suspension or termination of healthcare services, and job losses.⁵²

The current legal framework for mine hospitals recognises mine hospitals as either general private hospitals or standard workplace-based healthcare systems.⁵³ Nonetheless, the legal framework for mine hospitals ought to recognise the distinctive history, role, function, and socio-economic impact of mine hospitals on mine-affected communities. Therefore, different legal rules should apply to mine hospital establishments, ownership and management transfers, and closures.

3. Research Question

This dissertation aims to determine what is the role of mine hospitals in mine-affected communities and how mine hospitals should be regulated. This question translates into three sub-inquiries:

- a) What is the historical context of the development of mine hospitals?
- b) What socio-economic impact do mine hospitals have on mining-affected communities?
- c) What is the current legal framework for mine hospitals and is there a need for legislative reform?

⁵⁰Deborah Spicer 'The big mine-hospital debate' available at <https://www.engineeringnews.co.za/article/the-big-minehospital-debate-2003-05-05>, accessed on 30 November 2019.

⁵¹ Deborah Spicer 'The big mine-hospital debate'; *National Center for Rural Health Works* Fred C. Eilrich, Gerald A. Doeksen & Cheryl F. St. Clair et al 'The Economic Impact of Recent Hospital Closures on Rural Communities' National Center for Rural Health Works online July 2015, available at <http://ruralhealthworks.org/wp-content/uploads/2018/04/Impact-of-HospitalClosure-August-2015.pdf> at 1-9, accessed 8 November 2019.

⁵² *National Center for Rural Health Works* Fred C. Eilrich, Gerald A. Doeksen & Cheryl F. St. Clair et al 'The Economic Impact of Recent Hospital Closures on Rural Communities' National Center for Rural Health Works online July 2015, available at <http://ruralhealthworks.org/wp-content/uploads/2018/04/Impact-of-HospitalClosure-August-2015.pdf> at 1-9 accessed 8 November 2019.

⁵³ See the Mine Health and Safety Act 29 of 1996, National Health Act 61 of 2003 and the Regulations Governing Private Hospitals and Unattached Operating Theatre Units (as amended) in GN 158 of 1 February 1980.

4. Research Outline

This minor dissertation comprises seven chapters. Chapter Two discusses the historical background of the establishment and development of mine hospital infrastructure by mining companies in South Africa. It also explores the evolution of healthcare facilities, healthcare services, and hospital staff at mine hospitals. Chapter Three outlines the current legal framework for mine hospitals in South Africa. It illustrates how the legal framework influences the development of mine hospitals. The chapter also identifies loopholes in the legal framework.

Chapter Four examines the positive socio-economic impacts of mine hospitals on mine-affected communities. Chapter Five examines the negative socio-economic impacts of mine hospitals on mine-affected communities. It analyses the negative effects of mine hospital ownership and management transfers and closures on mine-affected communities. Chapter Six proposes recommendations for the development of different legal rules for mine hospitals. This chapter proposes specific legislative provisions to incorporate into the legal framework. Chapter Seven presents the conclusions drawn from this research, the research limitations, and the scope for further research.

5. Scope and Limitation of the Research

There are limitations whilst exploring the aims of this research. The following are the limitations of the study: first, the limited scope of this minor dissertation necessarily means that not all aspects of mine hospitals can be examined comprehensively. The scope of this study is therefore limited to those aspects of mine hospitals, in the South African context, that impact mine-affected communities. These aspects include the history, role, function, and socio-economics impact of mine hospitals in mine-affected communities.

Second, it is not within the scope of this research to examine all aspects of the legal framework pertaining to the provision of private healthcare services at hospitals, occupational healthcare, and the socio-economic development of mine-affected communities. The dissertation presents only a preliminary assessment of those aspects of the legal framework pertaining to the relationship between mine hospitals and mine-affected communities.

Third, the research does not purport to be anything more than a literature review, focusing on primary and secondary resources such as the Constitution, legislation, case law, books, scholarly articles, and media reports. The recommendations that were enabled through this limited study may well be enhanced by a further qualitative analysis or case study, for which the current scope and available time-frame did not allow.

Chapter 2: Introduction to Mine Hospitals

1. Introduction

Mining companies create a unique system of healthcare delivery in the mining sector by establishing and managing their own hospitals to provide healthcare services to their employees in rural and remote mining areas where healthcare is inaccessible.⁵⁴ Further, healthcare services provided at mine hospitals are usually extended to the dependants of mine employees and the communities surrounding mining operations.⁵⁵ Mine hospitals provide access to quality and affordable healthcare.⁵⁶ This healthcare is independent of the traditional public and private healthcare systems in South Africa.⁵⁷

This chapter provides an introduction to mine hospitals in South Africa. It outlines the historical background of the establishment and development of mine hospital infrastructure by mining companies. Further, the chapter explores the evolution of healthcare facilities, healthcare services, and hospital staff at mine hospitals.

2. Brief History of Mine Hospital Infrastructure

The history of mine hospitals dates back to the birth of the mining sector in South Africa.⁵⁸ The first mine hospital is estimated to have been built in a Kimberley mine compound in 1891.⁵⁹

⁵⁴ Zeenat Dasoo 'An analysis of the employment of medical practitioners in South Africa: keynote address presented by Ms Zeenat Dasoo at the MPPA 16th Annual Congress, August 2013' (2014) 20 *Occupational Health Southern Africa* 24-27; and L.S. Williams 'Health and safety of mine native labourers' (1954) 54 *Journal of the Southern African Institute of Mining and Metallurgy* 7 at 270-273.

⁵⁵ Mervyn Susser & Violet Padayachi Cherry 'Health and Health Care under Apartheid' (1982) 3 *Journal of Public Health Policy* 4 at 455-475; and Zeenat Dasoo (2014) 20 *Occupational Health Southern Africa* 24-27; and Deborah Spicer 'The big mine-hospital debate' available at <http://m.engineeringnews.co.za/article/the-big-minehospital-debate-2003-05-05>, accessed on 22 January 2020.

⁵⁶ Freek Conje, Suzanne Reyneke & David van Wyk 'Local communities and health disaster management in the mining sector' (2013) 5 *Journal of Disaster Risk Studies* 2 at 8.
Zeenat Dasoo (2014) 20 *Occupational Health Southern Africa* 24-27; and Deborah Spicer 'The big mine-hospital debate'.

⁵⁷ Zeenat Dasoo (2014) 20 *Occupational Health Southern Africa* 24-27.

⁵⁸ A.E. Van der Merwe, D. Morris, M. Steyn & G.J. R. Maat 'The History and Health of a Nineteenth-Century Migrant Mine-Worker Population from Kimberley, South Africa' (2010) 65 *The South African Archaeological Bulletin* 192 at 186; and JPV van Niekerk 'The health of miner(s)' (2013) 103 *The South African Medical Journal* 1 at 3-4; and Mervyn Susser & Violet Padayachi Cherry (1982) 3 *Journal of Public Health Policy* at 455-475

⁵⁹ A.E. Van der Merwe, D. Morris, M. Steyn & G.J. R. Maat (2010) 65 *The South African Archaeological Bulletin* at 186; and Emilia Potenza 'All That Glitters- The rock on which the future will be built' available at <https://www.sahistory.org.za/archive/all-glitters-rock-which-future-will-be-built-emilia-potenza>, accessed on 14 May 2019.

Mine compounds consisted of hostels situated close to mine sites.⁶⁰ These hostels housed mine employees, the majority of which were black migrant workers.⁶¹ Mine sites and mine compounds were often located in remote underdeveloped areas.⁶² Access to healthcare services for mine employees became a concern of mining companies.⁶³ Additionally, black mine employees did not have equitable access to the private and public healthcare systems under the Apartheid regime.⁶⁴ It became more economical for mining companies to build and run their own hospitals to provide healthcare services to their employees.⁶⁵ This alternative was preferred as opposed to mining companies providing health insurance coverage for their employees and relying on an already burdened and inaccessible public and private healthcare system.⁶⁶

Following the rise of mining operations across the country,⁶⁷ the start of the 20th century saw the rapid development of mine health infrastructure in South Africa.⁶⁸ Mining companies established mine hospitals that provided free or affordable healthcare to mine employees, their dependents, and mine-affected communities.⁶⁹ These mine hospitals also offered a variety of healthcare services such as diagnostic care, emergency care, prenatal care, and surgical

⁶⁰ G. H. Pirie & M. da Silva 'Hostels for African migrants in greater Johannesburg' (1986) 12 *Geo Journal* 2 at 173-180; and A.E. Van der Merwe, D. Morris, M. Steyn & G.J. R. Maat (2010) 65 *The South African Archaeological Bulletin* at 186.

⁶¹ A.E. Van der Merwe, D. Morris, M. Steyn & G.J. R. Maat (2010) 65 *The South African Archaeological Bulletin* at 186.

⁶² Monika Weber-Fahr, John E. Strongman & Ramani Kunanayagam et al 'Mining' in Jeni Klugman (ed) *A Sourcebook for Poverty Reduction Strategies: Macroeconomic and Sectoral Approaches* (2002) 439-465; and Jonathan Crush & Wilmot James 'Depopulating the compounds: Migrant labour and mine housing in South Africa' (1991) 19 *World Development* 4 at 301-316.

⁶³ Deborah Spicer 'The big mine-hospital debate' available at <http://m.engineeringnews.co.za/article/the-big-minehospital-debate-2003-05-05>, accessed on 22 January 2020.

⁶⁴ Mervyn Susser & Violet Padayachi Cherry (1982) 3 *Journal of Public Health Policy* at 455-475; Jock McCulloch 'Medicine, Politics and Disease on South Africa's Gold Mines' (2014) 39 *Journal of Southern African Studies* 3 at 543-556; and Zeenat Dasoo 'An analysis of the employment of medical practitioners in South Africa: keynote address presented by Ms Zeenat Dasoo at the MMPA 16th Annual Congress, August 2013' (2014) 20 *Occupational Health Southern Africa* 24-27.

⁶⁵ *The Innovative Pharmaceutical Association of South Africa* Heather McLeod 'NHI and Workplace Healthcare' (2010) at 1-16.

⁶⁶ *The Innovative Pharmaceutical Association of South Africa* Heather McLeod 'NHI and Workplace Healthcare' (2010) at 1-16.

⁶⁷ Jock McCulloch (2014) 39 *Journal of Southern African Studies* at 543-556; and J.S. Harington, N.D. McGlashan & E.Z. Chelkowska 'A century of migrant labour in the gold mines of South Africa' (2004) 104 *Journal of the Southern African Institute of Mining and Metallurgy* 2 at 65-70; and R.G.B. Pickering 'Deep level mining and the role of R & D' (1995) 96 *Journal of Southern African Institute of Mining and Metallurgy* 5 at 173-176.

⁶⁸ John Lincoln 'Memories of War...Premier Mine and the village of Cullinan' available at <http://samilitaryhistory.org/vol141jl.html>, accessed 23 January 2020.

⁶⁹ *The Innovative Pharmaceutical Association of South Africa* Heather McLeod 'NHI and Workplace Healthcare' (2010) at 1-16.

services.⁷⁰ Examples of mine hospitals established in the early 20th century include the Tambo Memorial Hospital,⁷¹ New Kleinfontein Mine Hospital⁷², and Premier Mine Hospital.⁷³

The Tambo Memorial Hospital is a regional hospital situated in the town of Boksburg in the Gauteng Province.⁷⁴ The mine hospital was jointly established in 1905 by the South African government and the gold mining company East Rand Proprietary.⁷⁵ The hospital was established to provide for the diagnosis and treatment of diseases prevalent in the mining sector.⁷⁶ It catered primarily to East Rand Proprietary's employees, their dependents, and communities surrounding the company's mining operations.⁷⁷ The government assumed full ownership and control of the hospital in 1984.⁷⁸ The Tambo Memorial Hospital is now fully funded and operated by the government and caters primarily to the communities surrounding the hospital.⁷⁹

The New Kleinfontein Mine Hospital is a former hospital situated in the town of Benoni in the Gauteng Province.⁸⁰ The mine hospital was established in 1906 by the gold mining company New Kleinfontein.⁸¹ The hospital was established to provide for the diagnosis and treatment of diseases prevalent in the mining sector and catered exclusively to New

⁷⁰*The Innovative Pharmaceutical Association of South Africa* Heather McLeod 'NHI and Workplace Healthcare' (2010) at 1-16.

⁷¹ See Annexure 3 to this dissertation for a map depicting the approximate location of the Tambo Memorial Hospital in relation to the mine site and the hospital service area.

⁷² See Annexure 4 to this dissertation for a map depicting the approximate location of the New Kleinfontein Mine Hospital in relation to the mine site and the hospital service area.

⁷³ See Annexure 5 to this dissertation for a map depicting the approximate location of the Premier Mine Hospital in relation to the mine site and the hospital service area.

⁷⁴ Aroomugam Naidoo *Trends in Adult Medical Admissions at Tambo Memorial Hospital, Gauteng, between 2005 and 2007* (LLM thesis, University of the Witwatersrand, 2009) at 1.

⁷⁵ Aroomugam Naidoo *Trends in Adult Medical Admissions at Tambo Memorial Hospital, Gauteng, between 2005 and 2007* (LLM thesis, University of the Witwatersrand, 2009) at 1.

⁷⁶ Aroomugam Naidoo *Trends in Adult Medical Admissions at Tambo Memorial Hospital, Gauteng, between 2005 and 2007* (LLM thesis, University of the Witwatersrand, 2009) at 1.

⁷⁷ Aroomugam Naidoo *Trends in Adult Medical Admissions at Tambo Memorial Hospital, Gauteng, between 2005 and 2007* (LLM thesis, University of the Witwatersrand, 2009) at 1.

⁷⁸ Aroomugam Naidoo *Trends in Adult Medical Admissions at Tambo Memorial Hospital, Gauteng, between 2005 and 2007* (LLM thesis, University of the Witwatersrand, 2009) at 1.

⁷⁹ Aroomugam Naidoo *Trends in Adult Medical Admissions at Tambo Memorial Hospital, Gauteng, between 2005 and 2007* (LLM thesis, University of the Witwatersrand, 2009) at 1.

⁸⁰ *Benoni City Times* Glynis Cox Millett-Clay 'Ready for any emergency' Benoni City Times online 3 October 2016, available at <https://benonicitytimes.co.za/271233/ready-for-any-emergency/?repeat=w3tc> accessed 5 January 2019.

⁸¹ *Benoni City Times* Glynis Cox Millett-Clay 'Ready for any emergency' Benoni City Times online 3 October 2016, available at <https://benonicitytimes.co.za/271233/ready-for-any-emergency/?repeat=w3tc> accessed 5 January 2019.

Kleinfontein's employees.⁸² In 1914, it extended its healthcare provision to the mine employees' dependants and women and children in the surrounding communities.⁸³ In 1943, the hospital extended its healthcare services to the general public (i.e. including men).⁸⁴

The Premier Mine Hospital (formerly known as the Cullinan Diamond Mine Hospital) is a hospital situated in the town of Cullinan in the Gauteng Province.⁸⁵ The mine hospital was established in 1907 by the Cullinan Diamond Mine company.⁸⁶ The hospital was established to provide for the diagnosis and treatment of diseases prevalent in the mining sector and the treatment of war-related injuries and illnesses.⁸⁷ It catered primarily to the mining company's employees and soldiers who fought in the Anglo-Boer wars.⁸⁸

The examples above provide a glimpse of the early establishment of mine hospitals in the 19th and 20th centuries.⁸⁹ By owning and managing their own hospitals, mining companies developed an autonomous healthcare system for mine employees, their dependents, and members of the public.⁹⁰

3. Mine Hospital Facilities and Hospitals

Mine hospitals provide healthcare services primarily to mine employees.⁹¹ These healthcare services serve as workplace-based occupational health services.⁹² Chapter 3 examines the

⁸² *Benoni City Times* Glynis Cox Millett-Clay 'Ready for any emergency' Benoni City Times online 3 October 2016, available at <https://benonicitytimes.co.za/271233/ready-for-any-emergency/?repeat=w3tc> accessed 5 January 2019.

⁸³ *Benoni City Times* Glynis Cox Millett-Clay 'Ready for any emergency' Benoni City Times online 3 October 2016, available at <https://benonicitytimes.co.za/271233/ready-for-any-emergency/?repeat=w3tc> accessed 5 January 2019.

⁸⁴ *Benoni City Times* Glynis Cox Millett-Clay 'Ready for any emergency' Benoni City Times online 3 October 2016, available at <https://benonicitytimes.co.za/271233/ready-for-any-emergency/?repeat=w3tc> accessed 5 January 2019.

⁸⁵ John Lincoln 'Memories of War...Premier Mine and the village of Cullinan' available at <http://samilitaryhistory.org/vol141jl.html>, accessed 23 January 2020.

⁸⁶ John Lincoln 'Memories of War...Premier Mine and the village of Cullinan'.

⁸⁷ John Lincoln 'Memories of War...Premier Mine and the village of Cullinan'.

⁸⁸ John Lincoln 'Memories of War...Premier Mine and the village of Cullinan'.

⁸⁹ Zeenat Dasoo 'An analysis of the employment of medical practitioners in South Africa: keynote address presented by Ms Zeenat Dasoo at the MIPA 16th Annual Congress, August 2013' (2014) 20 *Occupational Health Southern Africa* 24-27; and Deborah Spicer 'The big mine-hospital debate' available at <http://m.engineeringnews.co.za/article/the-big-minehospital-debate-2003-05-05>, accessed on 22 January 2020.

⁹⁰ Zeenat Dasoo (2014) 20 *Occupational Health Southern Africa* 24-27.

⁹¹ TB in the Mining Sector in Southern Africa 'Consolidated Report: Review of existing legislation and regulations for mine health and safety in the ten countries' available at <https://www.timssa.co.za/Documents/Studies/Legislation%20and%20Regulations%20Review%20-%20Health%20Focus.pdf> at 27-29, accessed 17 May 2019.

⁹² TB in the Mining Sector in Southern Africa 'Consolidated Report: Review of existing legislation and regulations for mine health and safety in the ten countries' available at

regulatory framework for occupational healthcare delivery in the mining sector. The regulatory framework imposes extensive legal obligations on mining companies that are not typically imposed on employers in other economic sectors in South Africa.⁹³ These legal obligations include the duty to provide comprehensive health services such as occupational health screenings, medical surveillances, and fitness-to-work examinations.⁹⁴ As a result, mining companies often establish mine hospitals with advanced occupational health services that include a comprehensive range of healthcare from primary care to hospitalisation.⁹⁵

These healthcare services are often extended to the dependants of mine employees and surrounding communities impacted by mining operations.⁹⁶ For example, Harmony Gold, a gold mining company in South Africa, began its mining operations in the town of Randfontein in the Gauteng Province in the early 2000s.⁹⁷ The mining company established the Sir Albert Medical Centre Private Hospital to provide healthcare services to its employees.⁹⁸ The mine hospital initially provided specialised healthcare services, mainly the diagnosis and treatment of mine-related illnesses and diseases.⁹⁹ A few years after the establishment of the mine hospital, its healthcare services were extended to surrounding communities.¹⁰⁰ A representative of Harmony Gold states that it was the company's policy to attract private patients (i.e. non-employees) to the hospital because of the surrounding community's limited access to healthcare facilities.¹⁰¹ Thereafter, 60% of the hospital's intake was mine employees with the remaining 40% comprising community members.¹⁰² In 2013 the Lenmed Group acquired ownership and

<https://www.timssa.co.za/Documents/Studies/Legislation%20and%20Regulations%20Review%20-%20Health%20Focus.pdf> at 27-29, accessed 17 May 2019.

⁹³ *The Innovative Pharmaceutical Association of South Africa* Heather McLeod 'NHI and Workplace Healthcare' (2010) at 1-16.

⁹⁴ *The Innovative Pharmaceutical Association of South Africa* Heather McLeod 'NHI and Workplace Healthcare' (2010) at 1-16.

⁹⁵ *The Innovative Pharmaceutical Association of South Africa* Heather McLeod 'NHI and Workplace Healthcare' (2010) at 1-16.

⁹⁶ TB in the Mining Sector in Southern Africa 'Consolidated Report: Review of existing legislation and regulations for mine health and safety in the ten countries' available at <https://www.timssa.co.za/Documents/Studies/Legislation%20and%20Regulations%20Review%20-%20Health%20Focus.pdf> at 27-29, accessed 17 May 2019.

⁹⁷ Harmony Gold 'History' available at <https://www.harmony.co.za/about/history>, accessed 6 January 2019.

⁹⁸ Lenmed Health 'Growing the Group, Growing the Healthcare' available at <https://www.lenmed.co.za/images/financials/2013AFS.pdf> at 5, accessed 6 January 2020.

⁹⁹ Oaklins 'Lenmed Health Pty Limited has acquired Sir Albert Medical Center' available at <https://www.oaklins.com/ar/en/deals/39048/>, accessed 6 January 2019.

¹⁰⁰ Deborah Spicer 'The big mine-hospital debate' available at <http://m.engineeringnews.co.za/article/the-big-minehospital-debate-2003-05-05>, accessed on 22 January 2020.

¹⁰¹ Deborah Spicer 'The big mine-hospital debate'.

¹⁰² Deborah Spicer 'The big mine-hospital debate'.

control of the hospital.¹⁰³ Lenmed is a healthcare company that provides private healthcare in Southern Africa.¹⁰⁴ The hospital was renamed the Lenmed Health Randfontein Private Hospital.¹⁰⁵ The hospital currently operates as a general private hospital providing healthcare services to Randfontein residents.¹⁰⁶ Additionally, the hospital continues to provide healthcare services to Harmony Gold's employees as per a service-level agreement entered into by Lenmed and Harmony Gold.¹⁰⁷

Mining companies, particularly those running large mining operations, have the financial capacity to manage a hospital effectively.¹⁰⁸ Mining companies establish hospitals that have comparable facilities to private and public hospitals.¹⁰⁹ Mine hospitals, particularly those owned and managed by large mining companies, often have state-of-the-art facilities.¹¹⁰

Much of the state-of-the-art facilities available at mine hospitals are the result of heavy investment from mine-specific medical aid schemes.¹¹¹ For example, Anglo American South Africa, a platinum mining company, has a closed medical scheme titled Platinum Health.¹¹² The membership of Platinum Health is restricted to the mining company's employees, their dependents, and the employees of several smaller mining companies involved in South Africa's platinum sector.¹¹³ The Platinum Health medical scheme offers low-cost affordable plans to its members.¹¹⁴ Platinum Health established several scheme-owned hospitals and clinics across the

¹⁰³ Lenmed Health 'Growing the Group, Growing the Healthcare' available at <https://www.lenmed.co.za/images/financials/2013AFS.pdf> at 5, accessed 6 January 2020.

¹⁰⁴ Lenmed Health 'About' available at <https://www.lenmed.co.za/about-lenmed/>, accessed 6 January 2020.

¹⁰⁵ Lenmed Health 'Growing the Group, Growing the Healthcare' available at <https://www.lenmed.co.za/images/financials/2013AFS.pdf> at 5, accessed 6 January 2020.

¹⁰⁶ Lenmed 'Randfontein Private Hospital' available at <https://www.lenmed.co.za/hospital/randfontein-private-hospital-lenmed/>, accessed 6 January 2020.

¹⁰⁷ Oaklins 'Lenmed Health Pty Limited has acquired Sir Albert Medical Center' available at <https://www.oaklins.com/ar/en/deals/39048/>, accessed 6 January 2019.

¹⁰⁸ Zeenat Dasoo 'An analysis of the employment of medical practitioners in South Africa: keynote address presented by Ms Zeenat Dasoo at the MMPA 16th Annual Congress, August 2013' (2014) 20 *Occupational Health Southern Africa* at 24-27.

¹⁰⁹ Zeenat Dasoo (2014) 20 *Occupational Health Southern Africa* at 24-27.

¹¹⁰ TB in the Mining Sector in Southern Africa 'Consolidated Report: Review of existing legislation and regulations for mine health and safety in the ten countries' available at <https://www.timssa.co.za/Documents/Studies/Legislation%20and%20Regulations%20Review%20-%20Health%20Focus.pdf> at 27-29, accessed 17 May 2019.

¹¹¹ *The Innovative Pharmaceutical Association of South Africa* Heather McLeod 'NHI and Workplace Healthcare' (2010) at 1-16.

¹¹² Platinum Health 'About Us – Our Business' available at <https://platinumhealth.co.za/our-business/>, accessed 6 January 2020.

¹¹³ These mining companies include Platinum Group Metals, Atlatza Resources Corporation and Northam Platinum; Platinum Health available at <https://platinumhealth.co.za/our-business/>, accessed 6 January 2020.

¹¹⁴ Anglo American Platinum 'Sustainable Development Report' available at <https://www.angloamericanplatinum.com/~media/Files/A/Anglo-American-Group/Platinum/report-archive/2004/sustainable-dev.pdf> at 89, accessed 6 January 2020.

country.¹¹⁵ The head of Anglo American Platinum's health department states that all of the health functions that the mining company takes responsibility for are performed at its healthcare facilities.¹¹⁶ The hospitals and clinics offer a range of occupational health services.¹¹⁷ These health services include medical surveillance, which assesses whether mine employees are fit and ensure that the employees maintain their health.¹¹⁸ The health services also include physical and rehabilitation units, which ensure that mine employees are physically capable of doing the work they have been assigned to do.¹¹⁹ The Platinum Health facilities offer a diverse range of healthcare such as dentistry, optometric services, physiotherapy, and radiological services.¹²⁰

Mining companies usually establish mine hospitals with diverse medical infrastructure.¹²¹ This infrastructure includes computerized tomography (CT) scanners, X-ray machines, ultrasound machines, and magnetic resonance imaging (MRI) machines.¹²² This sophisticated infrastructure enables mine hospitals to provide a wide range of health services, including obstetrics, orthopedic services, general surgery, psychiatry, and diagnostic radiology.¹²³ Mine hospitals also usually have a variety of medical professionals such as dentists, nurses, physicians, and surgeons.¹²⁴

It is also common for mining companies to set up satellite clinics at their different mine sites across the country.¹²⁵ These satellite clinics are walk-in clinics, which attend to mine employees on the mine sites and only complicated medical cases are referred to the mine

¹¹⁵ Platinum Health 'Platinum Health Facilities' available at <https://platinumhealth.co.za/our-facilities/>, accessed 6 January 2020.

¹¹⁶ Mining Mirror 'Cas Badenhorst and Charles Mbakeni: moving health to zero harm' available at <http://miningmirror.co.za/2018/07/11/cas-badenhorst-and-charles-mbakeni-moving-health-to-zero-harm/>, accessed on 22 January 2020.

¹¹⁷ Mining Mirror 'Cas Badenhorst and Charles Mbakeni: moving health to zero harm' (2018).

¹¹⁸ Mining Mirror 'Cas Badenhorst and Charles Mbakeni: moving health to zero harm' (2018).

¹¹⁹ Mining Mirror 'Cas Badenhorst and Charles Mbakeni: moving health to zero harm' (2018).

¹²⁰ Platinum Health 'Platinum Health Facilities' available at <https://platinumhealth.co.za/our-facilities/>, accessed 6 January 2020.

¹²¹ Deborah Spicer 'The big mine-hospital debate' available at <http://m.engineeringnews.co.za/article/the-big-minehospital-debate-2003-05-05>, accessed on 22 January 2020.

¹²² Deborah Spicer 'The big mine-hospital debate' available at <http://m.engineeringnews.co.za/article/the-big-minehospital-debate-2003-05-05>, accessed on 22 January 2020.

¹²³ *The Innovative Pharmaceutical Association of South Africa* Heather McLeod 'NHI and Workplace Healthcare' (2010) at 1-16, TB in the Mining Sector in Southern Africa 'Consolidated Report: Review of existing legislation and regulations for mine health and safety in the ten countries' available at <https://www.timssa.co.za/Documents/Studies/Legislation%20and%20Regulations%20Review%20-%20Health%20Focus.pdf> at 27-29, accessed 17 May 2019; and Deborah Spicer 'The big mine-hospital debate'.

¹²⁴ *The Innovative Pharmaceutical Association of South Africa* Heather McLeod 'NHI and Workplace Healthcare' (2010) at 1-16.

¹²⁵ TB in the Mining Sector in Southern Africa 'Consolidated Report: Review of existing legislation and regulations for mine health and safety in the ten countries' available at <https://www.timssa.co.za/Documents/Studies/Legislation%20and%20Regulations%20Review%20-%20Health%20Focus.pdf> at 27-29, accessed 17 May 2019.

hospitals.¹²⁶ Additionally, some mining companies with large mine hospitals cater to mine employees of small or medium-sized mining companies on a contractual basis.¹²⁷

Further, some mining companies invest in or fund mine hospitals in other countries.¹²⁸ An example is the Jwaneng Mine Hospital and the Orapa Mine Hospital. The Jwaneng Mine hospital is situated in the town of Jwaneng in the Southern District of Botswana.¹²⁹ The Orapa Mine Hospital is situated in the town of Orapa in the Central District of Botswana.¹³⁰ The Jwaneng Mine Hospital and the Orapa Mine Hospital were established by Debswana.¹³¹ Debswana is a diamond mining company that is jointly owned by the government of Botswana and the South African diamond mining company De Beers.¹³² The mine hospitals provide healthcare services to the mine employees working at the Jwaneng diamond mine and the Orapa diamond mine.¹³³ The mine hospitals also provide healthcare services to the dependants of the mine employees and the surrounding communities.¹³⁴ The hospitals offer comprehensive health services such as pharmaceutical services, maternity care, physiotherapy, radiological services,

¹²⁶ TB in the Mining Sector in Southern Africa ‘Consolidated Report: Review of existing legislation and regulations for mine health and safety in the ten countries’ available at <https://www.timssa.co.za/Documents/Studies/Legislation%20and%20Regulations%20Review%20-%20Health%20Focus.pdf> at 27-29, accessed 17 May 2019.

¹²⁷ TB in the Mining Sector in Southern Africa ‘Consolidated Report: Review of existing legislation and regulations for mine health and safety in the ten countries’ available at <https://www.timssa.co.za/Documents/Studies/Legislation%20and%20Regulations%20Review%20-%20Health%20Focus.pdf> at 27-29, accessed 17 May 2019.

¹²⁸ TB in the Mining Sector in Southern Africa ‘Consolidated Report: Review of existing legislation and regulations for mine health and safety in the ten countries’ available at <https://www.timssa.co.za/Documents/Studies/Legislation%20and%20Regulations%20Review%20-%20Health%20Focus.pdf> at 27-29, accessed 17 May 2019.

¹²⁹ Debswana ‘Health and Wellness’ available at <http://www.debswana.com/Careers/4Cs/Clarification/Pages/HealthAndWellnessServices.aspx>, accessed on 23 January 2020.

¹³⁰ Samuel O. Idowu, Abubakar S. Kasum & Asli Yüksel Mermod *People, Planet and Profit: Socio-Economic Perspectives of CSR* (2014) at 114-118.

¹³¹ Samuel O. Idowu, Abubakar S. Kasum & Asli Yüksel Mermod (2014) at 114-118; and N. Lock ‘Jwaneng – the untold story of the discovery of the world’s richest diamond mine’ (2019) 119 *The Journal of the Southern African Institute of Mining and Metallurgy* 2 at 156.

¹³² Samuel O. Idowu, Abubakar S. Kasum & Asli Yüksel Mermod (2014) at 114-118; N. Lock (2019) 119 *The Journal of the Southern African Institute of Mining and Metallurgy* at 156; and Debswana ‘Health and Wellness’ available at <http://www.debswana.com/Careers/4Cs/Clarification/Pages/HealthAndWellnessServices.aspx>, accessed on 23 January 2020.

¹³³ Samuel O. Idowu, Abubakar S. Kasum & Asli Yüksel Mermod (2014) at 114-118; and N. Lock (2019) 119 *The Journal of the Southern African Institute of Mining and Metallurgy* at 156.

¹³⁴ Samuel O. Idowu, Abubakar S. Kasum & Asli Yüksel Mermod (2014) at 114-118.

and dental services.¹³⁵ The mine hospitals also operate infectious disease care centres.¹³⁶ The infectious disease care centres offer anti-retroviral therapy and associated HIV and AIDS treatment programmes to the general public.¹³⁷ The Jwaneng Mine Hospital caters to approximately 40 000 patients per annum and the Orapa Mine Hospital caters to approximately 70 000 patients per annum.¹³⁸ The mine employees receive healthcare at no cost and non-employees receive low-cost healthcare or free healthcare in cases of medical emergencies.¹³⁹

Mine hospitals are inclined to provide specialised healthcare to the mining sector because the medical staff who are employed at these hospitals are trained to deal with common occupational diseases.¹⁴⁰ The most common occupational diseases in the mining sector are tuberculosis,¹⁴¹ silicosis;¹⁴² and noise-induced hearing loss.¹⁴³ The healthcare professionals in the mining sector include pulmonologists (who specialise in the treatment of respiratory

¹³⁵ Debswana 'Health and Wellness' available at <http://www.debswana.com/Careers/4Cs/Clarification/Pages/HealthAndWellnessServices.aspx>, accessed on 23 January 2020.

¹³⁶ Debswana 'Health and Wellness' available at <http://www.debswana.com/Careers/4Cs/Clarification/Pages/HealthAndWellnessServices.aspx>, accessed on 23 January 2020; and Samuel O. Idowu, Abubakar S. Kasum & Asli Yüksel Mermod (2014) at 114-118.

¹³⁷ Debswana 'Health and Wellness' available at <http://www.debswana.com/Careers/4Cs/Clarification/Pages/HealthAndWellnessServices.aspx>, accessed on 23 January 2020; and Samuel O. Idowu, Abubakar S. Kasum & Asli Yüksel Mermod (2014) at 114-118.

¹³⁸ Samuel O. Idowu, Abubakar S. Kasum & Asli Yüksel Mermod (2014) at 114-118.

¹³⁹ Samuel O. Idowu, Abubakar S. Kasum & Asli Yüksel Mermod (2014) at 114-118.

¹⁴⁰ Zeenat Dasoo 'An analysis of the employment of medical practitioners in South Africa: keynote address presented by Ms Zeenat Dasoo at the MMPA 16th Annual Congress, August 2013' (2014) 20 *Occupational Health Southern Africa* 24-27.

¹⁴¹ See Lauren Alecci Hartel, Abdo S. Yazbeck & Patrick L. Osewe 'Responding to Health System Failure on Tuberculosis in Southern Africa' (2018) 4 *Health Systems & Reform* 2 at 93-100; Chris Bateman 'Annually, 1% of gold miners die – 4% sent home sick' (2014) 104 *South African Medical Journal* 3 at 160-162; JP de V van Niekerk 'The health of mine(r)s' (2013) 103 *South African Medical Journal* 1 at 3-4; Adele Baleta 'Southern African declaration targets TB in mining sector' (2012) 380 *The Lancet* 9849 at 1217-1218; and Chris Bateman 'Collaborative push to address TB crisis on mines' (2009) 99 *South African Medical Journal* 12 at 852-855.

¹⁴² See Jill Murray & Ntombizodwa Ndlovu 'Silicosis and pulmonary tuberculosis in South African gold miners: 1975 – 2012' (2014) 44 *European Respiratory Journal* 58 at 45-46; G. Nelson & J. Murray 'Silicosis at autopsy in platinum mine workers' (2013) 63 *Occupational Medicine* 2 at 196-202; Chris Bateman 'Silicosis – 10 000 gold miners getting ready to sue' (2012) 102 *South African Medical Journal* 6 at 338-340; Jill Murray, Tony Davies & David Rees 'Occupational lung disease in the South African mining industry: Research and policy implementation' (2011) 32 *Journal of Public Health Policy* 1 at 65-79; and Shula Marks 'The Silent Scourge? Silicosis, Respiratory Disease and Gold-Mining in South Africa' (2006) 32 *Journal of Ethnic and Migration Studies* 4 at 569-589.

¹⁴³ See N. Moroe, K. Khoza-Shangase & M. Madahana et al 'A proposed preliminary model for monitoring conservation programmes in the mining sector in South Africa' (2019) 119 *Journal of the Southern African Institute of Mining and Metallurgy* 7 at 671-679; Nomfundo F. Moroe 'Occupational noise-induced hearing loss in South African large-scale mines: exploring hearing conservation programmes as complex interventions embedded in a realist approach' (2018) 23 *International Journal of Occupational Safety and Ergonomics* at 1-9; Nomfundo Moroe, Katijah Khoza-Shangase & Amisha Kanji 'The management of occupational noise-induced hearing loss in the mining sector in Africa: A systematic review – 1994 to 2016' (2018) 60 *Journal of Occupational Health* 5 at 376-382; L.I. Zungu, A.L. Edwards & L.A. Milanzi et al 'Evaluation of the current practices of noise-induced hearing loss (NIHL) awareness training in the South African mining industry' (2015) 21 *Occupational Health Southern Africa* 1 at 11-17; and A.L. Edwards & D. Kritzing (2012) 112 *Journal of the Southern African Institute of Mining and Metallurgy* at 865-869.

conditions prevalent in the mining sector such as asthma, silicosis, and tuberculosis)¹⁴⁴ and otolaryngologists (who specialise in the treatment of hearing impairment such as Noise-Induced Hearing Loss).¹⁴⁵

By providing health services to mine employees at mine hospitals, low-income workers are offered an affordable alternative to expensive medical aid schemes.¹⁴⁶ Thus, these employees are not susceptible to unsustainable healthcare costs.¹⁴⁷

4. Conclusion

Chapter 2 provides a brief introduction to mine hospitals, their history, and their function. The establishment and evolution of mine hospitals in South Africa create a unique, autonomous, and affordable health delivery system in the mining sector.¹⁴⁸ This health delivery system is unique because mining companies establish and manage their own hospitals to provide healthcare to their employees. Further, the healthcare services at mine hospitals are often extended to the dependants of mine employees and the surrounding communities.¹⁴⁹

¹⁴⁴ Leonard HT Go, Silpa D. Krefft & Robert A. Cohen et al 'Lung disease and coal mining: What pulmonologists need to know' 22 *Current Opinion in Pulmonary Medicine* 2 at 170-178.

¹⁴⁵ Miningsafety.co.za 'Hearing and Mining Safety' available at <https://www.miningsafety.co.za/dynamiccontent/63/Hearing-and-Mining-Safety>, accessed 9 February 2020.

¹⁴⁶ Deborah Spicer 'The big mine-hospital debate' available at <http://m.engineeringnews.co.za/article/the-big-minehospital-debate-2003-05-05>, accessed on 22 January 2020; and Harmony Gold 'Occupational health and employee well-being' available at <https://www.harmony.co.za/assets/sd/reports/2010/wellbeing.htm>, accessed on 23 January 2020.

¹⁴⁷ Deborah Spicer 'The big mine-hospital debate'; and Harmony Gold 'Occupational health and employee well-being' available at <https://www.harmony.co.za/assets/sd/reports/2010/wellbeing.htm>, accessed on 23 January 2020.

¹⁴⁸ Zeenat Dasoo 'An analysis of the employment of medical practitioners in South Africa: keynote address presented by Ms Zeenat Dasoo at the MMPA 16th Annual Congress, August 2013' (2014) 20 *Occupational Health Southern Africa* 24-27.

¹⁴⁹ Zeenat Dasoo (2014) 20 *Occupational Health Southern Africa* 24-27; and Deborah Spicer 'The big mine-hospital debate' available at <http://m.engineeringnews.co.za/article/the-big-minehospital-debate-2003-05-05>, accessed on 22 January 2020.

Chapter 3: Legal Framework for Mine Hospitals

1. Introduction

Mine hospitals in South Africa developed in diverse settings.¹⁵⁰ First, mines were situated in rural and remote areas that often did not have accessible healthcare facilities.¹⁵¹ A second consideration was the need for mine employees to access healthcare due to the inherently dangerous nature of mining activity.¹⁵² Much of the development of mine hospitals in South Africa, particularly in the post-apartheid era, is the result of legal obligations imposed on mining companies.¹⁵³

In fulfilment of its constitutional mandate to take ‘reasonable legislative measures’ to achieve the ‘progressive realisation’ of the right of all citizens to accessible healthcare,¹⁵⁴ the state established a legal framework for healthcare delivery nationally and specifically in the mining sector.¹⁵⁵ This legal framework includes the National Health Act (NHA)¹⁵⁶ and the Mine Health and Safety Act (MHSA).¹⁵⁷ The NHA is a legislative measure taken by the state to facilitate the progressive realisation of the right to accessible healthcare services nationally.¹⁵⁸ The Act creates a framework for healthcare delivery in the public and private sectors and determines the quality and standards of healthcare.¹⁵⁹ The MHSA is a legislative measure taken by the state to facilitate the progressive realisation of the right to accessible healthcare services specifically in the mining sector.¹⁶⁰ The Act creates the framework for occupational healthcare

¹⁵⁰ See, in general, ch 2; Jeebhay M & Jacobs B *South African Health Review* 5 ed (1999) 257-276.

¹⁵¹ L. Marais, J. Cloete & S. Denoon-Stevens (2018) 118 *Journal of the Southern African Institute of Mining and Metallurgy* at 1103-1103; and Jeebhay M & Jacobs B *South African Health Review* 5 ed (1999) 257-276.

¹⁵² This is because of the physical hazards (such as dust and harmful noise levels caused by rock breaking), mechanical hazards (such as heavy and dangerous machinery) and chemical hazards (such as toxic chemicals used to create explosives for rock breaking); see Jeebhay M & Jacobs B *South African Health Review* 5 ed (1999) 257-276.

¹⁵³ Zeenat Dasoo ‘An analysis of the employment of medical practitioners in South Africa: keynote address presented by Ms Zeenat Dasoo at the MPPA 16th Annual Congress, August 2013’ (2014) 20 *Occupational Health Southern Africa* 24-27.

¹⁵⁴ Section 27 of the Constitution.

¹⁵⁵ National Health Act 61 of 2003 and Mine Health and Safety Act 29 of 1996.

¹⁵⁶ National Health Act 61 of 2003.

¹⁵⁷ Mine Health and Safety Act 29 of 1996.

¹⁵⁸ Section 27 (2) of the Constitution.

¹⁵⁹ Section 2 of the NHA.

¹⁶⁰ Section 27 (2) of the Constitution.

delivery in the mining sector and provides for the implementation of measures required for the management of occupational health hazards.¹⁶¹

The legislature also established a legal framework for the socio-economic development of mine-affected communities by mining companies.¹⁶² The socio-economic development of mine-affected communities includes employment creation, social infrastructure development (such as roads, schools, and hospitals) and local procurement.¹⁶³

As a result, mining companies often establish mine hospitals with advanced occupational health services for their employees and comprehensive ranges of healthcare for their employees' dependents and surrounding communities.¹⁶⁴ Further, mining companies often establish mine hospitals that can have positive socio-economic impacts on mine-affected communities such as employment creation that increases disposable income and boosts local economic activities.¹⁶⁵

This chapter provides an overview of relevant aspects of the legal framework governing mine hospitals and the provision of healthcare in the mining sector. The chapter also discusses the socio-economic policies and principles regarding the role of mining companies towards the social and economic development of mine-affected communities.

First, this chapter discusses the context of the legal framework for health in the South Africa mining sector. Second, the chapter reviews the state's constitutional mandate to take legislative measures to achieve the progressive realisation of the right of access to healthcare. Third, it discusses specific provisions of the National Health Act¹⁶⁶ and the Regulations Governing Private Hospitals and Unattached Operating Theatre Units (Regulations)¹⁶⁷

¹⁶¹ Section 1 of the MHSA.

¹⁶² See sections 23(1)(e) & (f), 25(2)(f) & (h), 84(1)(g), 86(2)(g) of the Mineral and Petroleum Resources Development Act 28 of 2002, section 4.5.2 of the Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry of 2018 in GN 1002 GG 41934 of 27 September 2018; and section 8 of the Implementation Guidelines for the Broad-Based Socio-Economic Charter for the Mining and Minerals Industry of 2018 in GN 1339 GG 42122 of 19 December 2018.

¹⁶³ See sections 2.2, 2.4, 2.5 & 4.5 of the Mining Charter.

¹⁶⁴ National Health Insurance 'NHI and Workplace Healthcare' available at <http://www.health.gov.za>, accessed on 16 May 2019.

¹⁶⁵ Ch 4 explores the socio-economic impact of mine hospitals on mine-affected communities. Linda Starke 'Local Communities and Mines' in Linda Starke *Breaking New Ground: Mining, Minerals and Sustainable Development* (2002) at 205.

¹⁶⁶ National Health Act 61 of 2013.

¹⁶⁷ Regulations Governing Private Hospitals and Unattached Operating Theatre. Units (as amended) in GN 158 of 1 February 1980.

pertaining to the establishment and operation of hospitals in South Africa.¹⁶⁸ Fourth, this chapter examines specific obligations of mining companies pertaining to the provision of occupational health services in terms of the Mine Health and Safety Act.¹⁶⁹ Fifth, the chapter examines specific obligations and expectations of mining companies pertaining to the socio-economic development of mine-affected communities. These socio-economic policies and principles include Corporate Social Responsibility, the Social and Labour Plan, the Social License to Operate and the Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry.¹⁷⁰ The chapter also identifies loopholes in the legal framework discussed.

The legal framework governing national health, mine health and the socio-economic development of mine-affected communities is extensive. There is not sufficient scope within this dissertation to examine all aspects of the legal framework. This chapter limits the discussion to aspects of the legal framework relating to the establishment of mine hospitals and their provision of healthcare in the mining sector. The chapter further limits the discussion to socio-economic policies and principles relevant to mine hospitals.

2. The Constitution

This research necessitates a discussion of the relevant provisions in the Constitution pertaining to healthcare.¹⁷¹ The Bill of Rights within the Constitution protects, *inter alia*, the socio-economic rights of all people in the country.¹⁷² Socio-economic rights include the right to have

¹⁶⁸ National Health Act 61 of 2003.

¹⁶⁹ Mine Health and Safety Act 29 of 1996.

¹⁷⁰ Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry of 2018 in GN 1002 GG 41934 of 27 September 2018; Riana Horn, Marna de Klerk & Charl de Villiers 'The association between corporate social responsibility reporting and firm value for South African firms' (2018) 21 *South African Journal of Economic and Management Sciences* 1 at 1-10; Sara Bice & Kiren Moffat 'Social licence to operate and impact assessment' (2014) 32 *Impact Assessment and Project Appraisal* 4 at 257-262; and A. Mitchell, L. Moalusi & M. van der Want et al 'The Avatar syndrome: mining and communities' (2012) 112 *Journal of the Southern African Institute of Mining and Metallurgy* 2 at 151-155.

¹⁷¹ Constitution of the Republic of South Africa, 1996.

¹⁷² Chapter 2 of the Constitution; Christof Heyns & Danie Brand 'Introduction to socio-economic rights in the South African Constitution' (1998) 2 *Law, Democracy & Development* 2 at 153-167.

access to healthcare services.¹⁷³ The Constitution imposes positive and negative duties on the state concerning the right of access to healthcare services.¹⁷⁴

These positive and negative duties are as follows: first, the state must respect the right of access to healthcare services by not unfairly or unreasonably impeding people's access to existing healthcare services.¹⁷⁵ Second, it must protect the right of access to healthcare services by establishing a comprehensive regulatory framework that prohibits people from impeding the access of others.¹⁷⁶ Third, the state must promote the right of access to healthcare services by establishing a comprehensive regulatory framework that enables people to realise their own rights.¹⁷⁷ Fourth, it must fulfil the right of access to healthcare services by creating the necessary conditions for people to access healthcare by, *inter alia*, providing healthcare services to people.¹⁷⁸

The state is not obliged to provide healthcare services to everyone at once.¹⁷⁹ There is a constitutional limitation of the right of access to healthcare services.¹⁸⁰ The Constitution requires the state to take only reasonable measures 'within its available resources' to give effect to this right.¹⁸¹ These measures include, but are not limited to, the passing of laws by the legislature.¹⁸² For example, the legislature established the National Health Act to enable all people to access healthcare services;¹⁸³ and established the Mine Health and Safety Act to

¹⁷³ Section 27 (1) (a) of the Constitution.

¹⁷⁴ Section 7 (2) of the Constitution; and Chapter 2 of the Constitution; Christof Heyns & Danie Brand (1998) 2 *Law, Democracy & Development* at 153-167.

¹⁷⁵ Section27 'Chapter 2 - The Constitution and public health policy' available at <https://section27.org.za/wp-content/uploads/2010/04/Chapter2.pdf> at 33, accessed 15 January 2020.

¹⁷⁶ Section27 'Chapter 2 - The Constitution and public health policy' available at <https://section27.org.za/wp-content/uploads/2010/04/Chapter2.pdf> at 33, accessed 15 January 2020.

¹⁷⁷ Section27 'Chapter 2 - The Constitution and public health policy' available at <https://section27.org.za/wp-content/uploads/2010/04/Chapter2.pdf> at 33, accessed 15 January 2020.

¹⁷⁸ Section27 'Chapter 2 - The Constitution and public health policy' available at <https://section27.org.za/wp-content/uploads/2010/04/Chapter2.pdf> at 33, accessed 15 January 2020.

¹⁷⁹ *Soobramoney v Minister of Health (KwaZulu-Natal)* 1998 (1) SA 765 (CC) at para 31 and Section27 'Chapter 2 - The Constitution and public health policy' available at <https://section27.org.za/wp-content/uploads/2010/04/Chapter2.pdf> at 39, accessed 15 January 2020.

¹⁸⁰ *Soobramoney v Minister of Health (KwaZulu-Natal)* 1998 (1) SA 765 (CC) at para 43.

¹⁸¹ Section 27 (2) of the Constitution; and *Soobramoney v Minister of Health (KwaZulu-Natal)* 1998 (1) SA 765 (CC) at para 43.

¹⁸² Section27 'Chapter 2 - The Constitution and public health policy' available at <https://section27.org.za/wp-content/uploads/2010/04/Chapter2.pdf> at 34, accessed 15 January 2020.

¹⁸³ National Health Act 61 of 2003.

enable all mine employees who contract mine-related illnesses to access occupational healthcare.¹⁸⁴

Thus, when mining companies establish mine hospitals that provide healthcare services to mine employees and the public, they play an essential role in assisting the government to fulfil its constitutional mandate to provide access to healthcare. Nonetheless, the state cannot pass the entire healthcare duty to mining companies by relying on mining companies to create accessible healthcare services for all citizens.¹⁸⁵ Mining companies should not assume the government's responsibility for the development of social infrastructures such as hospitals and the provision of healthcare services, but rather strengthen the government's capacity.¹⁸⁶

3. National Health Act and Regulations for Private Hospitals

The National Health Act (NHA) is the primary legislation governing the provision of healthcare services in South Africa.¹⁸⁷ The NHA does not govern the provision of healthcare services in isolation, there are laws established by the Minister of Health and some provincial legislatures that apply to specific provinces or categories of health establishments. The general provisions of these laws are similar to the national legislation.¹⁸⁸ This section limits its discussion to the NHA and the Regulations Governing Private Hospitals and Unattached Operating Theatre Units (the Regulations).¹⁸⁹ The section briefly refers to the Regulation Governing Private Health Establishments, Western Cape,¹⁹⁰ because specific provisions on the establishment of private healthcare institutions in this regulation are extensive and warrant a discussion.

The NHA establishes the framework for the national health system and the delivery of healthcare services in the private and public sectors.¹⁹¹ The Act gives effect to section 27(2) of the Constitution by placing responsibility on the state for the provision of healthcare services

¹⁸⁴ Mine Health and Safety Act 29 of 1996.

¹⁸⁵ L. Marais, J. Cloete & S. Denoon-Stevens (2018) *The Journal of the Southern African Institute of Mining and Metallurgy* at 1103-1111.

¹⁸⁶ L. Marais, J. Cloete & S. Denoon-Stevens (2018) *The Journal of the Southern African Institute of Mining and Metallurgy* at 1103-1111.

¹⁸⁷ National Health Act 61 of 2013.

¹⁸⁸ See the relevant provincial departments' websites for the relevant regulations.

¹⁸⁹ Regulations Governing Private Hospitals and Unattached Operating Theatre. Units (as amended) in GN 158 of 1 February 1980.

¹⁹⁰ Regulation 1 and 6 of the Regulation Governing Private Health Establishments, Western Cape in Provincial Notice in Provincial Gazette Extraordinary 5728 Provincial Notice 187 of 22 June 2001.

¹⁹¹ Preamble of the NHAA.

within its available resources.¹⁹² This responsibility includes the duty to protect and promote the health of the population, to establish policies and measures necessary to improve the health of the nation, and to provide essential health services.¹⁹³ For people who can realise their own rights by, for example, seeking private healthcare, the state must create the regulatory framework for the private health sector to facilitate access to private healthcare.¹⁹⁴

3.1 Establishment of a Private Health Establishment or Hospital

The NHA provides guidelines for the establishment and functioning of health establishments in the private and public sectors.¹⁹⁵ The NHA defines a health establishment as ‘the whole or part of a public or private institution, facility, building or place, whether for profit or not, that is operated or designed to provide inpatient or outpatient’ medical care’.¹⁹⁶ The Act refers to private health establishments as health establishments that are not owned or controlled by the state.¹⁹⁷ The Regulations Governing Private Hospitals and Unattached Operating Theatre Units (the Regulations) further defines a ‘private hospital’ as a ‘hospital or any other institution, building or place at which provision is made for the treatment and care of cases requiring medical or surgical treatment and nursing care’.¹⁹⁸ The scope of the definitions of ‘private health establishments’ and ‘private hospitals’ is broad and all-inclusive. Therefore, mine hospitals constitute private health establishments or private hospitals because they are not owned or controlled by the government and they often provide medical and surgical treatment and nursing care.¹⁹⁹ Accordingly, mining companies that establish their own hospitals fall within the scope of the NHA and the Regulations.

However, the inclusion of mine hospitals in the legal framework for private hospitals or private health establishments is problematic. Mine hospitals and private hospitals have different objectives and impacts on the societies in which they operate. For example, mine hospitals

¹⁹² Section 3 of the NHAA.

¹⁹³ Section 3 of the NHA.

¹⁹⁴ Section 27 ‘Chapter 2 - The Constitution and public health policy’ available at <https://section27.org.za/wp-content/uploads/2010/04/Chapter2.pdf> at 39, accessed 15 January 2020.

¹⁹⁵ Chapter 6 of the NHA.

¹⁹⁶ Section 1 of the NHA.

¹⁹⁷ Section 1 of the NHA.

¹⁹⁸ Section 1 of the Regulations.

¹⁹⁹ See, in general, ch 2.

operate mainly in mine-affected communities – i.e. communities surrounding mining operations.²⁰⁰ These areas are often rural and remote.²⁰¹ Private hospitals typically operate in urban areas such as towns and cities.²⁰² Additionally, mine hospitals provide healthcare services mainly to poor, vulnerable, and disadvantaged groups.²⁰³ Private hospitals generally cater to affluent groups.²⁰⁴ Further, mining companies often establish mine hospitals as part of their mandate to provide healthcare services to their employees and to contribute to the socio-economic development of mine-affected communities.²⁰⁵ Private hospitals are often profit-driven and any socio-economic benefits are incidental to the hospital's operations.²⁰⁶ Thus, the rules pertaining to the establishment, operation, and closure of private hospitals should not be applied in the same manner to mine hospitals.

Before a mining company can establish and run a mine hospital in terms of the NHA and the Regulations, the following procedure must be followed: first, the mining company must obtain a certificate of need from the Director-General (i.e. the head of the National Department of Health).²⁰⁷ Second, the mining company must obtain a certificate of registration from the Director-General.²⁰⁸

The certificate of need authorises a legal person to establish or acquire a health establishment or provide health services.²⁰⁹ The purpose of the certificate of need requirement is to prevent the concentration of health establishments in specific areas of the country and the establishment of redundant health establishments.²¹⁰ Therefore, the Director-General must ensure that the establishment of a new health establishment in a specific area is necessary to promote the primary objective of the Act – namely, the creation of accessible healthcare services.²¹¹ The Director-General must also ensure that the local demand is sufficient to

²⁰⁰ See, in general, ch(s) 1 and 2

²⁰¹ See, in general, ch(s) 1 and 2

²⁰² Bernhard Gaede & Marije Versteeg 'The state of the right to health in rural South Africa' (2011) 2011 *South African Health Review* 1 at 99-106.

²⁰³ See, in general, ch 1.

²⁰⁴ Bernhard Gaede & Marije Versteeg (2011) 2011 *South African Health Review* at 99-106.

²⁰⁵ See, in general, ch 4.

²⁰⁶ Bernhard Gaede & Marije Versteeg (2011) 2011 *South African Health Review* at 99-106.

²⁰⁷ Section 36(1) of the NHA.

²⁰⁸ Section 2 of the Regulations.

²⁰⁹ Section 36(1) of the NHA.

²¹⁰ Gillingham, M. & Galbraith, K 'The role of certificate of need legislation: a survey' (2007) 19 *Journal of Public Budgeting, Accounting & Financial Management* 3 at 372-384.

²¹¹ Section 36(3) of the NHA.

facilitate a new health establishment and consider the impact of a new health establishment on existing health establishments in the area.²¹² However, in the case of mine hospitals, the Director-General (i.e. the Department of Health) may not have sufficient knowledge or expertise on the necessity of a mine hospital in a particular community or the importance of mine hospitals in the mining sector in general. As mentioned, mine hospitals and other private hospitals have different objectives and impacts on the societies in which they operate. Therefore, the consideration of an application for a certificate of need by a mining company should involve the input of the Department of Mineral Resources and Energy.

The certificate of registration is a legal document stating that a legal person has provided all the necessary information to the Director-General to validly register its health establishment.²¹³ In the application for a certificate of registration, the applicant must describe, *inter alia*, the location of the premises, the nature of the treatment to be rendered and the individuals that will use the hospital's services.²¹⁴ However, neither the NHA nor the Regulations provide public notification requirements before the issuing of a certificate of need or certificate of registration by the Director-General. In the case of mine hospitals, the NHA and Regulations do not require the Director-General or a mining company to issue a public notice informing a mine-affected community of the proposed establishment of a mine hospital. The NHA and Regulations do not require the Director-General or a mining company to invite the affected community members to comment.

The provincial legislature of the Western Cape, however, provides public notification requirements on Registration Certificates issued by the head of the Provincial Department responsible for health services.²¹⁵ The head of the Provincial Department must publish a notice of the receipt of an application by a legal person for the registration of a private health establishment and must request written comments from the public.²¹⁶ The head of the Provincial Department must also submit a copy of the application to all heads of department of the Western Cape.²¹⁷ Additionally, the copy of the application must be submitted to other provinces and

²¹² Section 36(3) of the NHA.

²¹³ Section 2 of the Regulations.

²¹⁴ Section 5(1) of the Regulations.

²¹⁵ Regulation 1 and 6 of the Regulation Governing Private Health Establishments, Western Cape in Provincial Notice in Provincial Gazette Extraordinary 5728 Provincial Notice 187 of 22 June 2001.

²¹⁶ Regulation 1 and 6(1).

²¹⁷ Regulation 6(b).

municipal councils potentially affected by the application and authorities or institutions deemed necessary.²¹⁸

The requirement to notify the public may give mine-affected communities in the Western Cape the opportunity to influence the outcome of decisions on the establishment of mine hospitals in their communities.²¹⁹ Additionally, the requirement to notify all heads of department may enable the Department of Mineral Resources, as a department potentially affected by the application, to comment on the application for a Registration Certificate.²²⁰ However, the Western Cape Regulations do not provide for the method of notice to the public (e.g. local newspaper, radio, television, etc.).

All health establishments must adhere to the healthcare quality requirements and standards prescribed in the NHA, the Regulations Governing Private Hospitals and Unattached Operating Theatre Units, and any other regulations prescribed by the Minister of Health and the provincial legislatures.²²¹ The quality requirements and standards relate to, *inter alia*, health technology and equipment, the delivery of health services and how patients are accommodated and treated.²²² A detailed discussion of these provisions is beyond the scope of this minor dissertation.

3.2 Termination of Certificate of Need and Certificate of Registration

A certificate of need and a certificate of registration may be withdrawn in specific circumstances. In the case of a certificate of need,²²³ the Director-General may withdraw a certificate of need on the recommendation of the Office of Standards Compliance,²²⁴ where the operation of a health establishment causes a risk to public health;²²⁵ and if the health

²¹⁸ Regulation 6(b).

²¹⁹ Regulation 1 and 6(1).

²²⁰ Regulation 6(b).

²²¹ See the National Health Act 61 of 2003, Regulations Governing Private Hospitals and Unattached Operating Table Units (as amended) in GN 158 of 1 February 1980 and the national and provincial departments' websites for the relevant regulations.

²²² Section 47(2) of the NHA.

²²³ Section 36(6) of the NHA.

²²⁴ The Office of Health Standards Compliance (OHSC) is an independent body that is established in terms of section 78(1) of the National Health Amendment Act 12 of 2013. The OHSC ensures the compliance of public and private health establishments with the prescribed health standards.

²²⁵ Section 36(6) of the NHA.

establishment is unable or unwilling to comply with prescribed norms and standards for health establishments.²²⁶

In the case of a certificate of registration, the Minister of Health and the Director-General may withdraw a certificate of registration if a private hospital fails to comply with the conditions and requirements prescribed in the Regulations.²²⁷ If a private health establishment or private hospital's certificate of need or certificate of registration is withdrawn, that establishment or hospital must close.²²⁸

The NHA does not provide requirements for a notice of a legal person's intent to close its health establishment. The Regulations, however, provide that proprietors of registered private hospitals must notify the Director-General, the Chief Executive officer responsible for hospitals of the provincial administration of the province where the hospital is situated, the patients and the staff of the intended closure of a hospital.²²⁹ This notification must be in writing and three months before the intended closure date.²³⁰ The Regulations also empower the Head of Department to authorise a shorter period of notice.²³¹

However, the Regulations do not provide for a legal person to notify the public (i.e. the community) of its intention to close its private hospital. This is problematic especially concerning the closure of mine hospitals.²³² This is because of the significant role and function of mine hospitals in mine-affected communities and the socio-economic impacts of closures on these communities.²³³

4 Mine Health and Safety Act

The MHSA is the primary legislation dealing with health and safety in mines.²³⁴ The Act provides for the protection of the health and safety of miners and other personnel working in

²²⁶ Section 36(6) of the NHA.

²²⁷ Regulation 18.

²²⁸ Section 36 (6) of the NHA and Section 18 of the Regulations.

²²⁹ Regulation 6 of the national Regulations.

²³⁰ Regulation 6 of the national Regulations.

²³¹ Regulation 6 of the national Regulations.

²³² See ch 5 for the socio-economic impacts of mine hospital closures.

²³³ See ch 5 for the socio-economic impacts of mine hospital closures.

²³⁴ Mine Health and Safety Act 29 of 1996.

mines.²³⁵ The MHSA places responsibility on employers in the mining sector for the provision of occupational health services.²³⁶ This responsibility includes the duty to improve monitoring standards and practices in the workplace, the implementation of medical surveillance, and the control of health risks.²³⁷ The Act provides guidelines for the establishment of comprehensive health services in the workplace.²³⁸ These guidelines are discussed in 4.1 and 4.2.

All mining companies fall within the scope of the MHSA and when mine hospitals are established to provide healthcare services primarily to mine employees, these healthcare services must meet the quality and standard requirements prescribed in the Act.²³⁹ However, the MHSA does not sufficiently regulate all healthcare services provided at mine hospitals. The Act focuses on healthcare pertaining to the treatment of job-related illnesses.²⁴⁰ Nonetheless, mine hospitals often offer other healthcare services that are not related to job-related illnesses such as prenatal care.²⁴¹

4.1 Work Environment, Facilities, and Occupational Medicine

The MHSA imposes an obligation on mining companies to ‘provide and maintain a working environment that is safe and without risk to the health of their employees’.²⁴² The Act also requires mining companies to establish serviceable health facilities to ensure that all employees have access to healthcare.²⁴³ The MHSA includes the term ‘occupational medicine’ in its definition of occupational health.²⁴⁴ Occupational medicine is defined as ‘the prevention,

²³⁵ Sihlangu S. Ngobese *Examining the Socio-economic Impact of Mining on the Livelihoods of Amajuba District Mining Communities* (Master of Commerce thesis, University of Kwazulu-Natal, 2015).

²³⁶ Gerlinde Reiprich, Andre van Zyl, Vanessa Govender, et al ‘TB in the Mining Sector in Southern Africa (TIMS). Service Package F: Prevention of TB in the mines. Review of existing legislation and regulations for mine health and safety in the ten countries’ available at <https://www.timssa.co.za/Documents/Studies/Legislation%20and%20Regulations%20Review%20-%20Health%20Focus.pdf>, accessed on 13 July 2019.

²³⁷ Mine Health and Safety Act 29 of 1996.

²³⁸ Jeebhay M & Jacobs B *South African Health Review* 5 ed (1999) 257-276.

²³⁹ G. Kleyn & J.J.L du Plessis ‘Sub-standard practices: effects on safety performance in South African gold mines’ (2016) 116 *The Journal of The Southern African Institute of Mining and Metallurgy* 4 at 306-316; E. Swart ‘The South African legislative framework for mine closure’ (2003) 103 *The Journal of The Southern African Institute of Mining and Metallurgy* 8 at 489-492.

²⁴⁰ M.A. Hermanus ‘Occupational health and safety in mining – status, new developments and concerns’ (2007) 107 *The Journal of The Southern African Institute of Mining and Metallurgy* 8 at 531-538.

²⁴¹ See section 3 of ch 2.

²⁴² Section 5 (1) of the MHSA.

²⁴³ Section 6 (1) of the MHSA.

²⁴⁴ Section 102 of the MHSA.

diagnosis, and treatment of occupational injuries and diseases’.²⁴⁵ Occupational medical practitioners are required to assist employees in matters related to occupational medicine.²⁴⁶

The Act requires mining companies to ensure that persons who are not employees (such as mine-affected communities), but who may be directly affected by mining activities, are not exposed to health hazards.²⁴⁷ Accordingly, mining companies have a responsibility to anticipate the health risks that their mining operations may cause and take the necessary steps to prevent these hazards from causing harm to the health of non-employees.²⁴⁸ Nonetheless, the Act does not expressly impose a legal obligation on mining companies to provide medical treatment to surrounding communities or to establish healthcare institutions.²⁴⁹ This absence of a positive duty to provide medical assistance or treatment means that, in the case of mining companies, they have the discretion to decide on whether to provide healthcare services to mine-affected communities. A mining company can commit in its Social and Labour Plan to contribute to the development of a mine-affected community by extending the healthcare services at its hospital to the community.²⁵⁰ The provision of healthcare services by mine hospitals to non-employees seems to be, however, a voluntary offering. Therefore, as mentioned, the MHSA does not sufficiently regulate mine hospitals because the Act does not consider cases where healthcare services provided by employers in the mining industry are extended to non-employees.

4.2 Medical Surveillance

The MHSA provides that mining companies must ‘establish and maintain a system of medical surveillance of employees’ exposed to health risks in the workplace.²⁵¹ Medical surveillance is the periodic assessment of the health of employees exposed to occupational hazards.²⁵² Medical surveillance includes ‘clinical examinations, biological monitoring, medical tests’ and fit-to-

²⁴⁵ Section 102 of the MHSA.

²⁴⁶ Section 102 of the MHSA.

²⁴⁷ Section 5 (2) (b) of the MHSA.

²⁴⁸ Section 5 (2) (b) of the MHSA.

²⁴⁹ Section 5(2)(b) of the MHSA.

²⁵⁰ A. Mitchell, L. Moalusi & M. van der Want (2012) 112 *The Journal of The Southern African Institute of Mining and Metallurgy* at 154.

²⁵¹ Section 13 of the MHSA.

²⁵² Department of Health ‘OH Services for Health Care Workers in the National Health Service of South Africa: A Guideline Booklet’ available at <http://www.kznhealth.gov.za/occhealth/OHmanual.pdf>, accessed on 12 July 2019.

work tests.²⁵³ These assessments are undertaken when health risks in the work environment change as occupational exposures vary.²⁵⁴

The purpose of medical surveillance is threefold: first, to establish a baseline of an employee's health against which any future changes can be measured;²⁵⁵ second, to identify any deterioration in the health status of an employee which may be caused by the work environment;²⁵⁶ and third, to determine whether an employee's physical and mental status is suitable for the performance of the requirements of the job.²⁵⁷ The MHSA requires employers to design systems of medical surveillance that provide information that employers can use to create measures to prevent, detect, and treat occupational illnesses.²⁵⁸

The MHSA provides that every mining company that establishes or maintains a system of medical surveillance must engage the part-time or full-time services of an occupational medical practitioner.²⁵⁹ The Act requires occupational medical practitioners to take every measure reasonably practicable to assist employees in 'matters related to occupational hygiene'.²⁶⁰ Occupational medical practitioners must also compile annual medical reports consisting of an analysis of each mine employee's health at a specific workplace.²⁶¹ Additionally, mining companies must keep records of the medical surveillance for every

²⁵³ Department of Health 'OH Services for Health Care Workers in the National Health Service of South Africa: A Guideline Booklet' available at <http://www.kznhealth.gov.za/occhealth/OHmanual.pdf>, accessed on 12 July 2019.

²⁵⁴ Karen Elizabeth Michell & Laetitia C Rispel "'Mindless Medicals'" Stakeholders' Perceptions of the Quality of Occupational Health Service Delivery in South Africa' (2017) 65 *Workplace health & safety* 3 at 100-108; LJ Podewils, L Bronner Murrison & C Bristow et al 'The other side of surveillance: Monitoring, applications, and integration of tuberculosis data to guide and evaluate programme activities in South Africa' (2016) 106 *South African Medical Journal* 4 at 394-398; and Department of Health 'OH Services for Health Care Workers in the National Health Service of South Africa: A Guideline Booklet' available at <http://www.kznhealth.gov.za/occhealth/OHmanual.pdf>, accessed on 12 July 2019.

²⁵⁵ Department of Health 'OH Services for Health Care Workers in the National Health Service of South Africa: A Guideline Booklet' available at <http://www.kznhealth.gov.za/occhealth/OHmanual.pdf>, accessed on 12 July 2019.

²⁵⁶ Department of Health 'OH Services for Health Care Workers in the National Health Service of South Africa: A Guideline Booklet' available at <http://www.kznhealth.gov.za/occhealth/OHmanual.pdf>, accessed on 12 July 2019.

²⁵⁷ Department of Health 'OH Services for Health Care Workers in the National Health Service of South Africa: A Guideline Booklet' available at <http://www.kznhealth.gov.za/occhealth/OHmanual.pdf>, accessed on 12 July 2019.

²⁵⁸ Section 13 (2) (b) of the MHSA; and K Michell 'Governance of occupational healthcare services in South Africa: cohesion or conflict?' (2017) 23 *Occupational Health Southern Africa* 2 at 10-17/

²⁵⁹ An occupational medical practitioner is an individual who holds a qualification in occupational medicine, or an equivalent qualification. See sections 13 (3) (a) and 102 of the MHSA.

²⁶⁰ Section 16 of the MHSA. The practice of identifying, controlling and preventing health hazards in the work environment. International Occupational Hygiene Association 'Occupational Hygiene' available at <https://www.ioha.net/about/occupational-hygiene/>, accessed 9 January 2020.

²⁶¹ Section 16 of the MHSA.

employee exposed to a health hazard.²⁶² All employees subject to medical surveillance in terms of the MHSA are entitled to an exit medical examination upon the termination of employment.²⁶³ The occupational medical practitioner conducting an exit medical examination must produce an exit certificate for that mine employee.²⁶⁴ The exit certificate indicates the results of all medical surveillance and the presence or absence of any occupational disease.²⁶⁵

Nonetheless, because the Act does not consider the provision of healthcare services to non-employees, the Act does not require employers to establish and maintain a system of medical surveillance of non-employees exposed to health hazards.²⁶⁶ Therefore, the deterioration in the health status of mine-affected communities due to mining operations is not required to be monitored in terms of the Act. This is problematic because, where mine hospitals provide healthcare services to mine-affected communities, mining companies cannot ascertain whether diseases contracted by community members are a direct result of their mining operations.

5. Socio-Economic Policies and Principles

The South African government views the mining sector as a vehicle for development.²⁶⁷ The responsibilities of mining companies as profit-driven institutions extend beyond merely operating within the law and contributing to the economy.²⁶⁸ Mining companies are expected to have an active leadership role in addressing social, economic, and environmental issues.²⁶⁹

There are various socio-economic policies and principles regarding the role of mining companies towards the social and economic development of mine-affected communities. These

²⁶² Section 15 of the MHSA.

²⁶³ Section 17 of the MHSA.

²⁶⁴ Section 17 of the MHSA.

²⁶⁵ Department of Health 'OH Services for Health Care Workers in the National Health Service of South Africa: A Guideline Booklet' available at <http://www.kznhealth.gov.za/occhealth/OHmanual.pdf>, accessed on 12 July 2019.

²⁶⁶ Section 13 of the MHSA.

²⁶⁷ G.T. Maluleke & L. Pretorius 'Modelling the impact of mining on socio-economic infrastructure development – a system dynamics approach' (2016) 27 *South African Journal of Industrial Engineering* 4 at 67; and Sihlangu S. Ngobese *Examining the Socio-economic Impact of Mining on the Livelihoods of Amajuba District Mining Communities* (Master of Commerce thesis, University of Kwazulu-Natal, 2015) at 16-26.

²⁶⁸ Sihlangu S. Ngobese *Examining the Socio-economic Impact of Mining on the Livelihoods of Amajuba District Mining Communities* (Master of Commerce thesis, University of Kwazulu-Natal, 2015) at 16-26.

²⁶⁹ Sihlangu S. Ngobese *Examining the Socio-economic Impact of Mining on the Livelihoods of Amajuba District Mining Communities* (Master of Commerce thesis, University of Kwazulu-Natal, 2015) at 16-26.

include Corporate Social Responsibility, the Social License to Operate, the Social and Labour Plan, and the Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry.²⁷⁰ These socio-economic policies and principles are discussed in 5.1 to 5.4.

5.1 Corporate Social Responsibility

Corporate Social Responsibility (CSR) is defined as a business' sense of responsibility towards the community and environment in which it operates.²⁷¹ The discussion of CSR in the mining sector pivots on the question of whether mining companies are doing enough for the communities in which they operate, i.e. mine-affected communities.²⁷² This is because the mining company often has a poor reputation due to, *inter alia*, environmental damage, and community displacement.²⁷³

Historically, CSR in the mining sector was restricted to mining companies making charitable donations to non-profit organisations or securing the blessings of traditional chiefs by offering them gifts.²⁷⁴ However, the meaning of CSR has evolved over the last two decades.²⁷⁵ There are now at least two angles to CSR: first, CSR encompasses a corporate commitment to protect the welfare of society, i.e. to avoid the negative impacts of mining activities on society.²⁷⁶ Second, CSR entails a commitment to improving the welfare of society

²⁷⁰ Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry of 2018 in GN 1002 GG 41934 of 27 September 2018; Riana Horn, Marna de Klerk & Charl de Villiers (2018) 21 *South African Journal of Economic and Management Sciences* at 1-10; Sara Bice & Kiren Moffat (2014) 32 *Impact Assessment and Project Appraisal* at 257-262; and A. Mitchell, L. Moalusi & M. van der Want et al (2012) 112 *Journal of the Southern African Institute of Mining and Metallurgy* at 151-155.

²⁷¹ Sihlangu S. Ngobese *Examining the Socio-economic Impact of Mining on the Livelihoods of Amajuba District Mining Communities* (Master of Commerce thesis, University of Kwazulu-Natal, 2015) at 16-26.

²⁷² Avril Edward Mathew Gardiner *The socio-economic wellbeing of small mining towns in the Northern Cape* (Master of Arts thesis, Stellenbosch University, 2017).

²⁷³ Christopher Rutledge 'Mining in South Africa: whose benefit and whose burden? – mining industry' (2019) 2019 *New Agenda: South African Journal of Social and Economic Policy* 72 at 34-39; Hlangabeza Gumede 'The socio-economic effects of mechanising and/or modernising hard rock mines in South Africa' (2018) 21 *South African Journal of Economic and Management Sciences* 1 at 1-11; and Makua M. Pretty & Kola O. Odeku 'Harmful mining activities, environmental impacts and effects in the mining communities in South Africa: a critical perspective' (2017) 8 *Environmental Economics* 4 at 14-21.

²⁷⁴ Avril Edward Mathew Gardiner *The socio-economic wellbeing of small mining towns in the Northern Cape* (Master of Arts thesis, Stellenbosch University, 2017).

²⁷⁵ Riana Horn, Marna de Klerk & Charl de Villiers (2018) 21 *South African Journal of Economic and Management Sciences* at 1-10; and Avril Edward Mathew Gardiner *The socio-economic wellbeing of small mining towns in the Northern Cape* (Master of Arts thesis, Stellenbosch University, 2017).

²⁷⁶ Sihlangu S. Ngobese *Examining the Socio-economic Impact of Mining on the Livelihoods of Amajuba District Mining Communities* (Master of Commerce thesis, University of Kwazulu-Natal, 2015).

by creating positive benefits for society.²⁷⁷ Mine-affected communities are exposed to numerous health hazards such as air, chemical, dust, and noise pollution.²⁷⁸ Mining companies can anticipate the health risks that their mining operations may cause and take the necessary steps to prevent these hazards from causing harm to the health to community members. For example, mining companies can implement dust control;²⁷⁹ or diverting water from mine sites to prevent it from contaminating nearby water sources.²⁸⁰ A mining company can also commit to managing the negative health impacts of its operations on surrounding communities by providing free or affordable healthcare services at its mine hospital.²⁸¹

5.2 Social and Labour Plan

The Mineral and Petroleum Resources Development Act (MPRDA) requires mining companies to commit to the socio-economic development of mine-affected communities.²⁸² When a mining company applies for a mining (or prospecting) right in terms of the MPRDA, it is required to submit a Social and Labour Plan (SLP).²⁸³ An SLP informs the Department of Mineral Resources and Energy about a mining company's planned local impact.²⁸⁴

An SLP also outlines how a mining company intends to share some of the benefits that flow from its mining operations.²⁸⁵ The objects of an SLP are to 'promote equal employment'²⁸⁶

²⁷⁷ Sihlangu S. Ngobese *Examining the Socio-economic Impact of Mining on the Livelihoods of Amajuba District Mining Communities* (Master of Commerce thesis, University of Kwazulu-Natal, 2015).

²⁷⁸ See Annexure 2 to this dissertation for a table depicting the health hazards and impacts associated with different types of mining activity.

²⁷⁹ N.F. Mashinini 'An integrated and sustainable solution to ensure in-section dust compliance' (2008) 108 *Journal of The Southern African Institute of Mining and Metallurgy* 4 at 201-215.

²⁸⁰ Andrew A. Sobek, Vijay Rastogi & Donald A. Benedetti 'Prevention of water pollution problems in mining: The bactericide technology' (1990) 9 *International Journal of Mine Water* 1-4 at 133-148.

²⁸¹ See, in general, ch(s) 1 and 2.

²⁸² Section 23 (1) (e) of the MPRDA.

²⁸³ Section 23 (1) (e) of the MPRDA.

²⁸⁴ Sihlangu S. Ngobese *Examining the Socio-economic Impact of Mining on the Livelihoods of Amajuba District Mining Communities* (Master of Commerce thesis, University of Kwazulu-Natal, 2015); A. Mitchell, L. Moalusi & M. van der Want et al (2012) 112 *Journal of the Southern African Institute of Mining and Metallurgy* at 151-155; and K. Thambi 'Mining companies attain relief through deductions on infrastructure relating to Social and Labour Plans: a case of the cart before the horse?' (2019) 119 *Journal of the Southern African Institute of Mining and Metallurgy* 5 at 479-483.

²⁸⁵ A. Mitchell, L. Moalusi & M. van der Want et al (2012) 112 *Journal of the Southern African Institute of Mining and Metallurgy* at 151-155.

²⁸⁶ Sihlangu S. Ngobese *Examining the Socio-economic Impact of Mining on the Livelihoods of Amajuba District Mining Communities* (Master of Commerce thesis, University of Kwazulu-Natal, 2015); and N.V. Moraka & M. Jansen van Rensburg 'Transformation in the South African mining industry – looking beyond the employment equity scorecard' (2015) 115 *Journal of the Southern African Institute of Mining and Metallurgy* 8 at 669-678.

and ‘advance the social and economic welfare’ of the citizens of the country²⁸⁷ and ensure that mining companies contribute towards the socio-economic development of mine-affected communities.²⁸⁸ Once a mining company is awarded a mining (or prospecting right), the submitted SLP becomes a legally binding document.²⁸⁹ For example, when a mining company applies for a mining (or prospecting) right in terms of the MPRDA, it may outline in its SLP its intention to construct a mine hospital. The mining company may indicate that the mine hospital will provide free or affordable healthcare services to community members affected by its mining operations.²⁹⁰ The mining company may also indicate that it will employ community members to work in the hospital as medical professionals, administrative staff (such as receptionists and clerks), and support staff (such as cleaning and catering staff).²⁹¹

However, the SLP guidelines do not have clear compliance thresholds or grievance mechanisms for mine-affected communities.²⁹² Further, it is problematic for mining companies to submit an SLP outlining the establishment of a hospital to the Department of Mineral Resources and Energy without input from the Department of Health. Without compliance thresholds and input from the Department of Health, the Department of Mineral Resources and Energy cannot sufficiently ascertain the appropriate hospital and healthcare requirements that should be outlined in an SLP. Further, mine-affected communities do not have grievance mechanisms that can enable them to make formal complaints about the contravention of an SLP pertaining to a mine hospital.

²⁸⁷ Sihlangu S. Ngobese *Examining the Socio-economic Impact of Mining on the Livelihoods of Amajuba District Mining Communities* (Master of Commerce thesis, University of Kwazulu-Natal, 2015).

²⁸⁸ Sihlangu S. Ngobese *Examining the Socio-economic Impact of Mining on the Livelihoods of Amajuba District Mining Communities* (Master of Commerce thesis, University of Kwazulu-Natal, 2015).

²⁸⁹ Sihlangu S. Ngobese *Examining the Socio-economic Impact of Mining on the Livelihoods of Amajuba District Mining Communities* (Master of Commerce thesis, University of Kwazulu-Natal, 2015).

²⁹⁰ See section 2 of ch 4.

²⁹¹ See section 3 of ch 4.

²⁹² Republic of South Africa: Department of Mineral Resources ‘Guidelines for the submission of a Social and Labour Plan – as required in terms of Regulation 46 of the Mineral and Petroleum Resources Development Act (Act 28 of 2002)’ (2010); and Ronald Ozzy Lamola *A critical analysis of the enforceability of Social and Labour Plans in the South African mining industry* (LLM thesis, University of the Pretoria, 2017) at 22-41.

5.3 Social License to Operate

Historically, the main economic driver for mining companies has been centred on commodity prices.²⁹³ However, there is a new variable included in a mining company's economic driver, namely development acceptance by all the stakeholders affected by the company's operations.²⁹⁴ This is the concept of the Social License to Operate (SLO).²⁹⁵ The SLO is the level of acceptance or approval by a mining company's shareholders and the community in which the company operates.²⁹⁶ The SLO is a self-regulating social principle or norm that helps a mining company to be socially accountable – to itself, its shareholders, and the community in which it operates.²⁹⁷ There is a general acceptance in the mining industry that owning and managing a company is not only about legal compliance.²⁹⁸ The SLO is an essential element of the success of a mining company.²⁹⁹ An SLO cannot be obtained from a court of law;³⁰⁰ it is earned from the members of mine-affected communities who form part of the company's stakeholders.³⁰¹

There is an increasing demand for mine-affected communities to receive a greater share of the benefits of mining and mining-related activities.³⁰² This demand has a bearing on a

²⁹³ Jacobus Johannes van Heerden *Sustainable mining communities post mine closure: Critical reflection on roles and responsibilities of stakeholders towards local economic development in the City of Matlosana* (Master of Philosophy thesis, Stellenbosch University, 2016).

²⁹⁴ Jacobus Johannes van Heerden *Sustainable mining communities post mine closure: Critical reflection on roles and responsibilities of stakeholders towards local economic development in the City of Matlosana* (Master of Philosophy thesis, Stellenbosch University, 2016).

²⁹⁵ Kieren Moffat, Justine Lacey & Airong Zhang et al 'The social licence to operate: a critical review' (2016) 89 *Forestry: An International Journal of Forest Research* 5 at 477-488.

²⁹⁶ Sara Bice & Kiren Moffat (2014) 32 *Impact Assessment and Project Appraisal* at 257-262.

²⁹⁷ Sara Bice & Kiren Moffat (2014) 32 *Impact Assessment and Project Appraisal* at 257-262; and Jacobus Johannes van Heerden *Sustainable mining communities post mine closure: Critical reflection on roles and responsibilities of stakeholders towards local economic development in the City of Matlosana* (Master of Philosophy thesis, Stellenbosch University, 2016).

²⁹⁸ Jacobus Johannes van Heerden *Sustainable mining communities post mine closure: Critical reflection on roles and responsibilities of stakeholders towards local economic development in the City of Matlosana* (Master of Philosophy thesis, Stellenbosch University, 2016).

²⁹⁹ Jason Prno 'An analysis of factors leading to the establishment of a social licence to operate in the mining industry' (2013) 38 *Resources Policy* 4 at 577-590.

³⁰⁰ Jacobus Johannes van Heerden *Sustainable mining communities post mine closure: Critical reflection on roles and responsibilities of stakeholders towards local economic development in the City of Matlosana* (Master of Philosophy thesis, Stellenbosch University, 2016).

³⁰¹ Jacobus Johannes van Heerden *Sustainable mining communities post mine closure: Critical reflection on roles and responsibilities of stakeholders towards local economic development in the City of Matlosana* (Master of Philosophy thesis, Stellenbosch University, 2016).

³⁰² A. Mitchell, L. Moalusi & M. van der Want et al (2012) 112 *Journal of the Southern African Institute of Mining and Metallurgy* at 151-155.

mining company's ability to obtain its SLO.³⁰³ The rationale is as follows: a mining company must first obtain the general acceptance from local community members to engage in mining operations in that community.³⁰⁴ For these community members to accept mining activity, they need to foresee some realisable benefits as compensation for the adverse effect of mining activities in their community.³⁰⁵

An example of an adverse effect is the health hazards associated with mining such as chemical, dust, air, and noise pollution.³⁰⁶ A mine hospital is an example of a mechanism that a mining company can use to provide a net benefit to mine-affected communities.³⁰⁷ This benefit is the provision of free or affordable healthcare services to community members.³⁰⁸ Therefore, the establishment of a mine hospital can assist a mining company in obtaining its SLO in a particular community.

If members of mine-affected communities do not feel that they are receiving a share of the benefits of mining and mining-related activities, they may revoke a company's SLO.³⁰⁹ This means that a mining company loses its credibility and reputation as a company in the mine-affected community.³¹⁰ Losing an SLO can be costly: growing resistance from a community may interfere with the mining company's operations and production.³¹¹

³⁰³ A. Mitchell, L. Moalusi & M. van der Want et al (2012) 112 *Journal of the Southern African Institute of Mining and Metallurgy* at 151-155.

³⁰⁴ Linda Starke 'Local Communities and Mines' in Linda Starke *Breaking New Ground: Mining, Minerals and Sustainable Development* (2002) at 205.

³⁰⁵ Linda Starke (2002) at 205.

³⁰⁶ See Annexure 2 to this dissertation for a table depicting the health hazards and impacts associated with different types of mining activity

³⁰⁷ Linda Starke (2002) at 205.

³⁰⁸ Linda Starke (2002) at 205.

³⁰⁹ Jacobus Johannes van Heerden *Sustainable mining communities post mine closure: Critical reflection on roles and responsibilities of stakeholders towards local economic development in the City of Matlosana* (Master of Philosophy thesis, Stellenbosch University, 2016).

³¹⁰ A. Mitchell, L. Moalusi & M. van der Want et al (2012) 112 *Journal of the Southern African Institute of Mining and Metallurgy* at 151-155; and Jacobus Johannes van Heerden *Sustainable mining communities post mine closure: Critical reflection on roles and responsibilities of stakeholders towards local economic development in the City of Matlosana* (Master of Philosophy thesis, Stellenbosch University, 2016).

³¹¹ Jacobus Johannes van Heerden *Sustainable mining communities post mine closure: Critical reflection on roles and responsibilities of stakeholders towards local economic development in the City of Matlosana* (Master of Philosophy thesis, Stellenbosch University, 2016).

5.4 Mining Charter

The MPRDA establishes the Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry (Mining Charter).³¹² The primary objective of the Mining Charter is to ‘facilitate sustainable transformation, growth and development’ of the mining sector.³¹³ The Mining Charter establishes the framework for, *inter alia*, enabling South Africans to benefit from the exploitation of the country’s mineral resources.³¹⁴ The Mining Charter gives effect to the Constitution and MPRDA’s objectives of redressing historical, social, and economic inequalities in South Africa.³¹⁵ Therefore, mining companies must meaningfully contribute to the development of mine-affected communities.³¹⁶ The Mining Charter provides that right-holders must contribute at least ‘1% of their net profit after tax towards socio-economic development’.³¹⁷

The Mining Charter also requires right-holders to conduct assessments to determine the developmental needs of the communities in which they intend to operate.³¹⁸ These assessments must be conducted in collaboration with the relevant stakeholders.³¹⁹ These stakeholders include municipalities, mine-affected communities, and traditional authorities.³²⁰ The development plans of right-holders must be contained in an approved Social and Labour Plan.³²¹

As mentioned, mine-affected communities are often rural, remote, and have limited livelihood opportunities.³²² This results in economic inequality where the employment opportunities and income are concentrated in urban communities.³²³ A mining company can increase the employment opportunities and income in mine-affected communities by employing community members at its mine hospital as medical professionals, administrative staff, and support staff.³²⁴ The creation of employment opportunities at mine hospitals will

³¹² Section 100 of the MPRDA.

³¹³ Page 7 of the Mining Charter.

³¹⁴ Section 100 (2) (a) of the MPRDA.

³¹⁵ Page 7 of the Mining Charter.

³¹⁶ Section 2.5 of the Mining Charter.

³¹⁷ Section 4.5.2. of the Mining Charter.

³¹⁸ Section 2.5.1 of the Mining Charter.

³¹⁹ Section 2.5.2 of the Mining Charter.

³²⁰ Section 2.5.2 of the Mining Charter.

³²¹ Section 2.5.2 of the Mining Charter.

³²² See, in general, ch 2.

³²³ Amartya K. Sen ‘From Income Inequality to Economic Inequality’ (1997) 64 *Southern Economic Journal* 2 at 384-401.

³²⁴ See section 3 of ch 4.

increase disposable incomes in mine-affected communities and promotes a key objective of the Mining Charter to redress economic inequalities in South Africa.³²⁵

6. Conclusion

The development and impact of mine hospitals in South Africa are influenced by the legal framework governing healthcare delivery nationally and occupational health in the mining sector. The Constitution requires the state to take reasonable legislative measures within its available resources to achieve the progressive realisation of the right of access to healthcare services.³²⁶ The state established the NHA and national and provincial regulations to enable everyone in the country to access healthcare services. The state also established the MHSA to enable employees in the mining sector to access healthcare services.

Mining companies that establish mine hospitals to provide healthcare to mine employees and surrounding communities fall within the scope of the NHA, the national and provincial regulations pertaining to the provision of private healthcare services and the MHSA, and must adhere to the standards, norms, and guidelines prescribed therein.³²⁷

Nonetheless, the chapter identified various loopholes in the legal framework that create grey areas in the regulation of mine hospitals. This is mainly because mine hospitals differ significantly from other private hospitals and standard workplace-based occupational health systems. Mine hospitals provide healthcare services to mine employees and mine-affected communities. They provide for the diagnosis and treatment specific and non-specific to the mining sector. Mine hospitals can also create employment and procurement opportunities for mine-affected communities.³²⁸ Therefore, mine hospitals cannot be adequately regulated solely by the NHA (and the accompanying regulations) or the MHSA.

Furthermore, the legal framework influences the development of mine hospitals by imposing obligations on mining companies to contribute to the socio-economic development

³²⁵ Page 7 of the Mining Charter.

³²⁶ Section 27 (2) of the Constitution.

³²⁷ Zeenat Dasoo 'An analysis of the employment of medical practitioners in South Africa: keynote address presented by Ms Zeenat Dasoo at the MMPA 16th Annual Congress, August 2013' (2014) 20 *Occupational Health Southern Africa* 24-27.

³²⁸ See, in general, ch 4.

of the communities in which they operate.³²⁹ Mining companies must consider broader interests other than their own.³³⁰ Mining companies must consider the socio-economic interests of mine-affected communities as required in terms of the Mining Charter. A mine hospital is an example of an initiative that a mining company could include in its SLP and part of its CSR. A mining company may outline in its SLP how a mine hospital will contribute to the development of the socio-economic welfare of a mine-affected community by providing healthcare services and employing community members as hospital staff.³³¹ The socio-economic impacts of a mine hospital can have a bearing on a mining company's ability to obtain its SLO.

However, the SLP may not be an adequate development tool for mining companies and mine hospitals. This is because the guidelines for SLPs do not establish compliance thresholds and the Department of Mineral Resources and Energy does not have sufficient expertise to determine the compliance thresholds for health establishments. The guidelines for SLPs also do not provide grievance mechanisms for affected persons. Mine-affected communities do not have formal legal complaint processes to follow in cases where they are issues with the operation of mine hospitals in their communities.

³²⁹ Sihlangu S. Ngobese *Examining the Socio-economic Impact of Mining on the Livelihoods of Amajuba District Mining Communities* (Master of Commerce thesis, University of Kwazulu-Natal, 2015).

³³⁰ Jacobus Johannes van Heerden *Sustainable mining communities post mine closure: Critical reflection on roles and responsibilities of stakeholders towards local economic development in the City of Matlosana* (Master of Philosophy thesis, Stellenbosch University, 2016).

³³¹ Ch 4 explores the socio-economic impact of mine hospitals on mine-affected communities.

Chapter 4: The Role of Mine Hospitals in the Socio-Economic Development of Mine-Affected Communities

1. Introduction

The socio-economic impacts of mining and mining-related activities on mine-affected communities have been the subject of multiple academic studies and discussions.³³² However, the socio-economic impacts of mine hospitals on mine-affected communities are less documented. Traditionally, mine hospitals have been thought of as small healthcare institutions situated at mine sites or mine compounds and catering exclusively to mine employees.³³³ Nevertheless, mine hospitals have developed and emerged as healthcare institutions offering a variety of health services to mine employees, their dependents, and surrounding communities.³³⁴ Mining companies develop significant medical infrastructure with the technology to treat a full range of health complaints.³³⁵

The importance of mine hospitals, however, extends beyond health care.³³⁶ Mine hospitals contribute to local economies by creating employment opportunities for mine-affected

³³² See Marietjie Ackerman, Doret Botha & Gerrit van der Wald 'Potential socio-economic consequences of mine closure' (2018) 14 *The Journal for Transdisciplinary Research in Southern Africa* 1 at 1-11; South African Human Rights Commission 'National Hearing on the Underlying Socio-economic Challenges of Mining-affected Communities in South Africa' available at <https://www.sahrc.org.za/home/21/files/SAHRC%20Mining%20communities%20report%20FINAL.pdf>, accessed on 20 June 2019; and K. Thomas Resane 'The mining-induced displacement and resettlement: The church as a heaven and ecclesiology in context's response' (2015) 71 *HTS Theological Studies* 3 at 1-8.

³³³ Zeenat Dasoo (2014) 20 *Occupational Health Southern Africa* at 24-27.

³³⁴ See section 3 of ch 2; and TB in the Mining Sector in Southern Africa 'Consolidated Report: Review of existing legislation and regulations for mine health and safety in the ten countries' available at <https://www.timssa.co.za/Documents/Studies/Legislation%20and%20Regulations%20Review%20-%20Health%20Focus.pdf> at 27-29, accessed on 17 May 2019

³³⁵ Deborah Spicer 'The big mine-hospital debate' available at <http://m.engineeringnews.co.za/article/the-big-minehospital-debate-2003-05-05>, accessed on 22 January 2020.

³³⁶ Republic of South Africa: Department of Health 'Human Resources for Health South Africa: HRH Strategy for the Health Sector: 2012/13 – 2016/17' (2011) at 30 & 67; *African Institute for Health and Leadership Development* Percy Mahlathi & Jabu Dlamini 'Minimum Date Sets for Human Resources for Health and the Surgical Workforce in South Africa's Health System – A rapid analysis of stock and migration' *African Institute for Health and Leadership Development* online September 2015, available at https://www.who.int/workforcealliance/031616south_africa_case_studiesweb.pdf?ua=1 at 4, accessed 22 January 2020, Valentine Bogdetsky, Karybek Ibraev & Jyldyz Abdyrakhmanova 'Mining Industry as a Source of Economig Growth in Kyrgyzstan' at 38-39; and Hospital Council of Northern & Central California 'Economic & Health Impact of Hospitals' available at https://www.hospitalcouncil.org/sites/main/files/file-attachments/hospitalc_eir-report_fmkt.pdf?1488242114 at 2-15 & 9, accessed on 22 January 2020.

communities.³³⁷ Further, mining companies can potentially promote local procurement by sourcing goods and services needed for mine hospitals from suppliers in mine-affected communities.³³⁸

This chapter examines the role of mine hospitals in promoting the socio-economic development of mine-affected communities. The chapter illustrates how mine hospitals can be mechanisms for the socio-economic betterment of mine-affected communities.

2. Healthcare Provision

There can be significant health infrastructure improvements in mine-affected communities with the establishment of mine hospitals by mining companies.³³⁹ Mining companies, particularly those running large mining operations often have the financial capacity to establish and manage their own hospitals.³⁴⁰ Mine hospitals often have comparable facilities to private and public hospitals in South Africa.³⁴¹

The establishment of mine hospitals improves healthcare access in mine-affected communities.³⁴² Mining companies often extend the provision of healthcare at mine hospitals

³³⁷ Republic of South Africa: Department of Health ‘Human Resources for Health South Africa: HRH Strategy for the Health Sector: 2012/13 – 2016/17’ (2011) at 30 & 67; *African Institute for Health and Leadership Development* Percy Mahlathi & Jabu Dlamini ‘Minimum Data Sets for Human Resources for Health and the Surgical Workforce in South Africa’s Health System – A rapid analysis of stock and migration’ African Institute for Health and Leadership Development online September 2015, available at https://www.who.int/workforcealliance/031616south_africa_case_studiesweb.pdf?ua=1 at 4, accessed 22 January 2020; Valentine Bogdetsky, Karybek Ibraev & Jyldyz Abdyrakhmanova ‘Mining Industry as a Source of Economig Growth in Kyrgyzstan’ at 38-39; and Hospital Council of Northern & Central California ‘Economic & Health Impact of Hospitals’ available at https://www.hospitalcouncil.org/sites/main/files/file-attachments/hospitalc_eir-report_fmtk.pdf?1488242114 at 2-15 & 9, accessed on 22 January 2020.

³³⁸ *World Health Organization* Tammy Boyce and Chris Brown ‘Economic and Social Impacts and Benefits of Health Systems’ World Health Organization online 2019, available at http://www.euro.who.int/__data/assets/pdf_file/0006/395718/Economic-Social-Impact-Health-FINAL.pdf?ua=1 at 16-19, accessed 22 January 2020; and Richard E. McDermott, Gary C. Cornia & Robert J. Parsons ‘The Economic Impact of Hospitals in Rural Communities’ (1991) 7 *The Journal of Rural Health* 2 at 117-133.

³³⁹ See, in general, ch 2.

³⁴⁰ TB in the Mining Sector in Southern Africa ‘Consolidated Report: Review of existing legislation and regulations for mine health and safety in the ten countries’ available at <https://www.timssa.co.za/Documents/Studies/Legislation%20and%20Regulations%20Review%20-%20Health%20Focus.pdf> at 27-29, accessed on 17 May 2019.

³⁴¹ TB in the Mining Sector in Southern Africa ‘Consolidated Report: Review of existing legislation and regulations for mine health and safety in the ten countries’ available at <https://www.timssa.co.za/Documents/Studies/Legislation%20and%20Regulations%20Review%20-%20Health%20Focus.pdf> at 27-29, accessed on 17 May 2019; see ch 2 for detailed discussion of mine hospital infrastructure.

³⁴² National Health Insurance ‘NHI and Workplace Healthcare’ available at <http://ipasa.co.za/Downloads/Policy%20and%20Reports%20->

to the communities in which they operate.³⁴³ For example, the De Beers Group reported that its mine hospitals across Africa (including South Africa) catered to approximately 88 000 community members in 2015.³⁴⁴ Further, in April 2019, De Beers South Africa established two mobile clinics in communities surrounding one of its mines in South Africa.³⁴⁵ The purpose of the mobile clinics is to provide healthcare to mine-affected communities where mine hospitals have not been established and where mining operations in those areas will terminate.³⁴⁶

The South African government intends to improve the overall health of mine-affected communities by addressing the healthcare challenges in these communities.³⁴⁷ In January 2019, the Health MEC met with representatives of three mining companies in the town of Rustenburg in the North-West province.³⁴⁸ The three mining companies are Impala Platinum, Royal Bafokeng, and Sibanye-Stillwater.³⁴⁹ These mining companies have established mine hospitals in Rustenburg with a combined total of 472 hospital beds.³⁵⁰ The purpose of the meeting between the Health MEC and the mining companies was to discuss how the mining companies can assist to ensure the availability of beds to accommodate patients in Rustenburg.³⁵¹ The state hospital in Rustenburg, the Job Shimankana Tabana Hospital (JST Hospital), is currently overburdened.³⁵² The Health MEC states that the burden on the JST Hospital can be reduced

%20General%20Health/NHI/policy%20brief%2015/IMSA%20NHI%20Policy%20Brief%2015%20NHI%20and%20Workplace%20Healthcare%20vF.pdf at 1-16, accessed on 16 May 2019.

³⁴³ National Health Insurance 'NHI and Workplace Healthcare' available at <http://ipasa.co.za/Downloads/Policy%20and%20Reports%20-%20General%20Health/NHI/policy%20brief%2015/IMSA%20NHI%20Policy%20Brief%2015%20NHI%20and%20Workplace%20Healthcare%20vF.pdf> at 1-16, accessed on 16 May 2019.

³⁴⁴ De Beers Group 'Building Forever – Report to Society 2015' available at <https://www.debeersgroup.com/~media/Files/D/De-Beers-Group/documents/reports/library/report-to-society-2015pdfdownloadasset.pdf> at 39, accessed 11 January 2020.

³⁴⁵ De Beers Group 'Two Mobile Clinics Boost Community Healthcare' available at <https://www.debeersgroup.com/creating-stories/2019/two-mobile-clinics-boost-community-healthcare>, accessed 11 January 2020.

³⁴⁶ De Beers Group 'Two Mobile Clinics Boost Community Healthcare' available at <https://www.debeersgroup.com/creating-stories/2019/two-mobile-clinics-boost-community-healthcare>, accessed 11 January 2020.

³⁴⁷ Republic of South Africa: South African Government 'Media Statements: North West addresses challenges in mining communities' (2019).

³⁴⁸ Republic of South Africa: South African Government 'Media Statements: North West addresses challenges in mining communities' (2019).

³⁴⁹ Republic of South Africa: South African Government 'Media Statements: North West addresses challenges in mining communities' (2019).

³⁵⁰ Republic of South Africa: South African Government 'Media Statements: North West addresses challenges in mining communities' (2019).

³⁵¹ Republic of South Africa: South African Government 'Media Statements: North West addresses challenges in mining communities' (2019).

³⁵² Republic of South Africa: South African Government 'Media Statements: North West addresses challenges in mining communities' (2019).

by transferring its patients to mine hospitals.³⁵³ The Health MEC emphasises the need for the Department of Health and the mining sector to work together to ensure that mine-affected communities have access to quality and affordable healthcare services.³⁵⁴

Furthermore, mining companies often extend the provision of healthcare at mine hospitals to other industries in South Africa.³⁵⁵ For example, the Impala Platinum Hospital extends its healthcare services to employees outside of its company.³⁵⁶ The Impala Platinum Mines Hospital is owned and managed by platinum mining company Impala Platinum.³⁵⁷ An estimated 80% of the beds at the hospital are occupied by Impala Platinum employees, their dependents, and former employees.³⁵⁸ The remaining 20% of the beds at the hospital are occupied by patients from companies in other industries or patients from companies contracting with Impala Platinum.³⁵⁹

3. Employment Creation

The importance of healthcare institutions to the economic development of a country is often overlooked.³⁶⁰ The healthcare sector serves as an essential mechanism for creating employment opportunities.³⁶¹ Further, healthcare institutions are usually leaders in providing good-quality employment opportunities ranging from high-to low-education requirements and experience.³⁶²

³⁵³ Republic of South Africa: South African Government 'Media Statements: North West addresses challenges in mining communities' (2019).

³⁵⁴ Republic of South Africa: South African Government 'Media Statements: North West addresses challenges in mining communities' (2019).

³⁵⁵ TB in the Mining Sector in Southern Africa 'Consolidated Report: Review of existing legislation and regulations for mine health and safety in the ten countries' available at <https://www.timssa.co.za/Documents/Studies/Legislation%20and%20Regulations%20Review%20-%20Health%20Focus.pdf> at 27-29, accessed on 17 May 2019; and Deborah Spicer 'The big mine-hospital debate' available at <http://www.miningweekly.com>, accessed on 3 March 2019.

³⁵⁶ Deborah Spicer 'The big mine-hospital debate'.

³⁵⁷ Deborah Spicer 'The big mine-hospital debate'.

³⁵⁸ Deborah Spicer 'The big mine-hospital debate'.

³⁵⁹ Deborah Spicer 'The big mine-hospital debate' available at <http://m.engineeringnews.co.za/article/the-big-minehospital-debate-2003-05-05>, accessed on 22 January 2020.

³⁶⁰ Foundation for Healthy Communities & New Hampshire Hospital Association 'The Economic Impact of Hospital Systems in New Hampshire' available at https://www.healthynh.com/images/PDFfiles/publications/Economic_Impact_State_Report_2014_FINAL.pdf at 3-22, accessed 22 January 2020.

³⁶¹ World Health Organization Tammy Boyce and Chris Brown 'Economic and Social Impacts and Benefits of Health Systems' World Health Organization online 2019, available at http://www.euro.who.int/__data/assets/pdf_file/0006/395718/Economic-Social-Impact-Health-FINAL.pdf?ua=1 at 16-19, accessed 22 January 2020.

³⁶² World Health Organization Tammy Boyce and Chris Brown 'Economic and Social Impacts and Benefits of Health Systems' World Health Organization online 2019, available at

Mining companies that establish mine hospitals in mine-affected communities can provide employment opportunities to community members in a diverse range of roles at their hospitals.³⁶³ Mining companies often employ a variety of medical professionals such as physicians, nurses, dentists, and surgeons.³⁶⁴ Further, healthcare institutions, including mine hospitals, can facilitate the employment of administrative staff (such as receptionists and unit clerks) and support staff (such as cleaning and catering staff, security guards and parking attendants).³⁶⁵

In January 2019, the North-West Department of Health announced its plans to collaborate with the Department of Mineral Resources and Energy, the Royal-Bafokeng Administration and mining companies operating in the town of Rustenburg in the North-West to establish a hospital.³⁶⁶ The hospital will be an academic hospital situated in the area of

http://www.euro.who.int/__data/assets/pdf_file/0006/395718/Economic-Social-Impact-Health-FINAL.pdf?ua=1 at 16-19, accessed 22 January 2020.

³⁶³ Republic of South Africa: Department of Health 'Human Resources for Health South Africa: HRH Strategy for the Health Sector: 2012/13 – 2016/17' (2011) at 30 & 67; *African Institute for Health and Leadership Development* Percy Mahlathi & Jabu Dlamini 'Minimum Date Sets for Human Resources for Health and the Surgical Workforce in South Africa's Health System – A rapid analysis of stock and migration' African Institute for Health and Leadership Development online September 2015, available at https://www.who.int/workforcealliance/031616south_africa_case_studiesweb.pdf?ua=1 at 4, accessed 22 January 2020; Valentine Bogdetsky, Karybek Ibraev & Jyldyz Abdyrakhmanova 'Mining Industry as a Source of Economig Growth in Kyrgyzstan' at 38-39; and Hospital Council of Northern & Central California 'Economic & Health Impact of Hospitals' available at https://www.hospitalcouncil.org/sites/main/files/file-attachments/hospitalc_eir-report_fmkt.pdf?1488242114 at 2-15 & 9, accessed on 22 January 2020.

³⁶⁴ Republic of South Africa: Department of Health 'Human Resources for Health South Africa: HRH Strategy for the Health Sector: 2012/13 – 2016/17' (2011) at 30 & 67; *African Institute for Health and Leadership Development* Percy Mahlathi & Jabu Dlamini 'Minimum Date Sets for Human Resources for Health and the Surgical Workforce in South Africa's Health System – A rapid analysis of stock and migration' African Institute for Health and Leadership Development online September 2015, available at https://www.who.int/workforcealliance/031616south_africa_case_studiesweb.pdf?ua=1 at 4, accessed 22 January 2020; Valentine Bogdetsky, Karybek Ibraev & Jyldyz Abdyrakhmanova 'Mining Industry as a Source of Economig Growth in Kyrgyzstan' at 38-39; and Hospital Council of Northern & Central California 'Economic & Health Impact of Hospitals' available at https://www.hospitalcouncil.org/sites/main/files/file-attachments/hospitalc_eir-report_fmkt.pdf?1488242114 at 2-15 & 9, accessed on 22 January 2020.

³⁶⁵ Republic of South Africa: Department of Health 'Human Resources for Health South Africa: HRH Strategy for the Health Sector: 2012/13 – 2016/17' (2011) at 30 & 67; *African Institute for Health and Leadership Development* Percy Mahlathi & Jabu Dlamini 'Minimum Date Sets for Human Resources for Health and the Surgical Workforce in South Africa's Health System – A rapid analysis of stock and migration' African Institute for Health and Leadership Development online September 2015, available at https://www.who.int/workforcealliance/031616south_africa_case_studiesweb.pdf?ua=1 at 4, accessed 22 January 2020; Valentine Bogdetsky, Karybek Ibraev & Jyldyz Abdyrakhmanova 'Mining Industry as a Source of Economig Growth in Kyrgyzstan' at 38-39; and Hospital Council of Northern & Central California 'Economic & Health Impact of Hospitals' available at https://www.hospitalcouncil.org/sites/main/files/file-attachments/hospitalc_eir-report_fmkt.pdf?1488242114 at 2-15 & 9, accessed on 22 January 2020.

³⁶⁶ Republic of South Africa: South African Government 'Media Statements: North West addresses challenges in mining communities' (2019); and *SABC News* Seentleeng Lehihi & Rejoice Moses 'Govt, mining industry to build academic hospital in N West' *SABC News* online 22 November 2019, available at <http://www.sabcnews.com/sabcnews/govt-mining-industry-to-build-academic-hospital-in-n-west/> accessed 11 January 2020.

Phokeng in the town of Rustenburg.³⁶⁷ The purpose of the hospital is to provide medical training and employment opportunities to community members that are unable to obtain employment at the mines in Phokeng.³⁶⁸ The hospital will also provide healthcare services to the community members in Phokeng.³⁶⁹

Women in mine-affected communities are often spouses or partners of mine employees and are passive recipients of the benefits of mining and mining-related activities.³⁷⁰ There has been a recent development of proactive policies by mining companies, labour unions, and the government to promote the participation of women in the mining sector.³⁷¹ However, the mining sector remains male-dominated.³⁷² There are still fewer employment opportunities for women in the mining sector.³⁷³ Mine hospitals can potentially be a mechanism for integrating women into the healthcare component of the mining sector. Studies suggest that jobs in the health and social care sectors tend to be more inclusive of women compared to other sectors.³⁷⁴ Therefore, mining can promote gender equity by creating employment opportunities for women in the mine hospital environment. The establishment of mine hospitals in rural and remote communities can address the issue of geographic economic inequality in South Africa.³⁷⁵ Geographic economic inequality is the uneven geographic distribution of economic

³⁶⁷ Republic of South Africa: South African Government 'Media Statements: North West addresses challenges in mining communities' (2019); and *SABC News* Seentleeng Lehihi & Rejoice Moses 'Govt, mining industry to build academic hospital in N West' *SABC News* online 22 November 2019, available at <http://www.sabcnews.com/sabcnews/govt-mining-industry-to-build-academic-hospital-in-n-west/> accessed 11 January 2020.

³⁶⁸ Republic of South Africa: South African Government 'Media Statements: North West addresses challenges in mining communities' (2019); and *SABC News* Seentleeng Lehihi & Rejoice Moses 'Govt, mining industry to build academic hospital in N West' *SABC News* online 22 November 2019, available at <http://www.sabcnews.com/sabcnews/govt-mining-industry-to-build-academic-hospital-in-n-west/> accessed 11 January 2020.

³⁶⁹ Republic of South Africa: South African Government 'Media Statements: North West addresses challenges in mining communities' (2019); and *SABC News* Seentleeng Lehihi & Rejoice Moses 'Govt, mining industry to build academic hospital in N West' *SABC News* online 22 November 2019, available at <http://www.sabcnews.com/sabcnews/govt-mining-industry-to-build-academic-hospital-in-n-west/> accessed 11 January 2020.

³⁷⁰ Linda Starke 'Local Communities and Mines' in Linda Starke *Breaking New Ground: Mining, Minerals and Sustainable Development* (2002) at 205.

³⁷¹ Linda Starke (2002) at 205.

³⁷² Linda Starke (2002) at 205.

³⁷³ Linda Starke (2002) at 205.

³⁷⁴ *World Health Organization* Tammy Boyce and Chris Brown 'Economic and Social Impacts and Benefits of Health Systems' *World Health Organization* online 2019, available at http://www.euro.who.int/__data/assets/pdf_file/0006/395718/Economic-Social-Impact-Health-FINAL.pdf?ua=1 at 16-19, accessed 22 January 2020.

³⁷⁵ *World Health Organization* Tammy Boyce and Chris Brown 'Economic and Social Impacts and Benefits of Health Systems' *World Health Organization* online 2019, available at http://www.euro.who.int/__data/assets/pdf_file/0006/395718/Economic-Social-Impact-Health-FINAL.pdf?ua=1 at 16-19, accessed 22 January 2020.

opportunities.³⁷⁶ Employment opportunities are usually concentrated in urban areas with large cities.³⁷⁷ The diverse range of career opportunities that mine hospitals present provides a lifeline for the unemployed in rural and remote areas to join the labour force and increase their household income.³⁷⁸ Therefore, mine hospitals can also contribute to the inclusive sustainable growth of mine-affected communities.³⁷⁹

Furthermore, quality of life factors plays an essential role in business and sector location decisions.³⁸⁰ The ability of a community to attract and retain new industries is influenced, *inter alia*, by its availability of healthcare services for the employees of those industries.³⁸¹ Accessible health services are imperative to business leaders' site locations.³⁸² Business enterprises are unlikely to locate in a community with inadequate or inconveniently located healthcare services.³⁸³ Therefore, when mining companies establish hospitals in mine-affected communities that provide healthcare services to the public, those communities can attract other industries and stimulate local economic activities.

³⁷⁶ World Health Organization Tammy Boyce and Chris Brown 'Economic and Social Impacts and Benefits of Health Systems' World Health Organization online 2019, available at http://www.euro.who.int/__data/assets/pdf_file/0006/395718/Economic-Social-Impact-Health-FINAL.pdf?ua=1 at 16-19, accessed 22 January 2020.

³⁷⁷ World Health Organization Tammy Boyce and Chris Brown 'Economic and Social Impacts and Benefits of Health Systems' World Health Organization online 2019, available at http://www.euro.who.int/__data/assets/pdf_file/0006/395718/Economic-Social-Impact-Health-FINAL.pdf?ua=1 at 16-19, accessed 22 January 2020.

³⁷⁸ National Health Insurance 'NHI and Workplace Healthcare' available at <http://ipasa.co.za/Downloads/Policy%20and%20Reports%20-%20General%20Health/NHI/policy%20brief%2015/MSA%20NHI%20Policy%20Brief%2015%20NHI%20and%20Workplace%20Healthcare%20vF.pdf> at 1-16, accessed on 16 May 2019.

³⁷⁹ World Health Organization Tammy Boyce and Chris Brown 'Economic and Social Impacts and Benefits of Health Systems' World Health Organization online 2019, available at http://www.euro.who.int/__data/assets/pdf_file/0006/395718/Economic-Social-Impact-Health-FINAL.pdf?ua=1 at 16-19, accessed 22 January 2020.

³⁸⁰ Foundation for Healthy Communities & New Hampshire Hospital Association 'The Economic Impact of Hospital Systems in New Hampshire' available at https://www.healthynh.com/images/PDFfiles/publications/Economic_Impact_State_Report_2014_FINAL.pdf at 3-22, accessed 22 January 2020.

³⁸¹ Foundation for Healthy Communities & New Hampshire Hospital Association 'The Economic Impact of Hospital Systems in New Hampshire' available at https://www.healthynh.com/images/PDFfiles/publications/Economic_Impact_State_Report_2014_FINAL.pdf at 3-22, accessed 22 January 2020.

³⁸² Foundation for Healthy Communities & New Hampshire Hospital Association 'The Economic Impact of Hospital Systems in New Hampshire' available at https://www.healthynh.com/images/PDFfiles/publications/Economic_Impact_State_Report_2014_FINAL.pdf at 3-22, accessed 22 January 2020.

³⁸³ Foundation for Healthy Communities & New Hampshire Hospital Association 'The Economic Impact of Hospital Systems in New Hampshire' available at https://www.healthynh.com/images/PDFfiles/publications/Economic_Impact_State_Report_2014_FINAL.pdf at 3-22, accessed 22 January 2020.

4. Creation of Procurement Opportunities

The potential economic impact of mine hospitals measured in terms of employment figures is significant.³⁸⁴ However, mine hospitals, similar to other healthcare institutions, can have secondary economic impacts on local communities whenever mine hospitals or mine hospital employees spend money.³⁸⁵

Mining companies, similar to other hospitals, must purchase goods and services to support their hospital activities. Hospital purchases include medical equipment, hospital furniture (such as examination tables, Intensive Care Unit (ICU) beds, stretchers, and wheelchairs), laundry and linen services, cleaning services; and construction and maintenance services.³⁸⁶ Mining companies, particularly those running large mining operations, often have large procurement budgets and can be influential purchasers of goods and services.³⁸⁷ An example of a secondary economic effect is the multi-million-rand hospital expansion project undertaken by Debswana Diamond Company (Debswana) in 2017.³⁸⁸ Debswana owns and manages Jwaneng Mine Hospital.³⁸⁹ In 2017, Debswana allocated approximately R104 million to expand and upgrade the hospital.³⁹⁰ The expansion and upgrade included the refurbishment

³⁸⁴ See discussion of employment creation in section 3 of ch 4.

³⁸⁵ Foundation for Healthy Communities & New Hampshire Hospital Association ‘The Economic Impact of Hospital Systems in New Hampshire’ available at https://www.healthynh.com/images/PDFfiles/publications/Economic_Impact_State_Report_2014_FINAL.pdf at 3-22, accessed 22 January 2020.

³⁸⁶ Foundation for Healthy Communities & New Hampshire Hospital Association ‘The Economic Impact of Hospital Systems in New Hampshire’ available at https://www.healthynh.com/images/PDFfiles/publications/Economic_Impact_State_Report_2014_FINAL.pdf at 3-22, accessed 22 January 2020.

³⁸⁷ TB in the Mining Sector in Southern Africa ‘Consolidated Report: Review of existing legislation and regulations for mine health and safety in the ten countries’ available at <https://www.timssa.co.za/Documents/Studies/Legislation%20and%20Regulations%20Review%20-%20Health%20Focus.pdf> at 27-29, accessed on 17 May 2019; and World Health Organization Tammy Boyce and Chris Brown ‘Economic and Social Impacts and Benefits of Health Systems’ World Health Organization online 2019, available at http://www.euro.who.int/__data/assets/pdf_file/0006/395718/Economic-Social-Impact-Health-FINAL.pdf?ua=1 at 16-19, accessed 22 January 2020.

³⁸⁸ See section 3 of ch 2 for detailed discussion about the Jwaneng Mine Hospital; De Beers Group ‘Debswana upgrades Jwaneng Hospital’ available at <https://www.debeersgroup.com/creating-stories/2016/debswana-upgrades-jwaneng-hospital>, accessed 11 January 2020; and Council for Health Service Accreditation of Southern Africa ‘News: Jwaneng Mine Hospital celebrates’ available at <http://cohsasa.co.za/jwaneng-mine-hospital-celebrates/>, accessed on 18 June 2019.

³⁸⁹ See section 3 of ch 2 for detailed discussion about the Jwaneng Mine Hospital; De Beers Group ‘Turning Finite Resources into Enduring Opportunity – Building on Diamonds’ available at <https://www.debeersgroup.com/~media/Files/D/De-Beers-Group/documents/reports/botswana/deb081-03-buildingondiamonds.pdf>, accessed on 18 June 2019.

³⁹⁰ De Beers Group ‘Debswana upgrades Jwaneng Hospital’ available at <https://www.debeersgroup.com/creating-stories/2016/debswana-upgrades-jwaneng-hospital>, accessed 11 January 2020; and Council for Health Service

of the hospital building, replacement of old furniture; and an upgrade of the waterpipe and security systems at the hospital.³⁹¹ Furthermore, in 2017, the gold mining company AngloGold Ashanti reported that it spent approximately 50% of its R845 million budget for health on mine hospital and clinic expenditures.³⁹²

The purchasing of goods and services by mine hospitals from other businesses and industries (such as construction, wholesale, and retail) can generate employment and income in other businesses and industries. Mining companies can also promote local procurement by purchasing the goods and services for their mine hospitals from suppliers in mine-affected communities.

A further secondary economic impact includes the purchases made by hospital employees.³⁹³ When mine hospitals create employment opportunities, this can increase the disposable in mine-affected communities.³⁹⁴ Examples of local purchases made by hospital employees include housing, food, appliances, and transportation expenses.³⁹⁵ Additionally, the taxes paid by hospital employees to the government contribute to the development of public services in communities such as schools and local police and fire stations.³⁹⁶

Accreditation of Southern Africa ‘News: Jwaneng Mine Hospital celebrates’ available at <http://cohsasa.co.za/jwaneng-mine-hospital-celebrates/>, accessed on 18 June 2019.

³⁹¹ De Beers Group ‘Debswana upgrades Jwaneng Hospital’ available at <https://www.debeersgroup.com/creating-stories/2016/debswana-upgrades-jwaneng-hospital>, accessed 11 January 2020; and Council for Health Service Accreditation of Southern Africa ‘News: Jwaneng Mine Hospital celebrates’ available at <http://cohsasa.co.za/jwaneng-mine-hospital-celebrates/>, accessed on 18 June 2019.

³⁹² AngloGold Ashanti ‘Integrated Report 2017’ (2017).

³⁹³ Foundation for Healthy Communities & New Hampshire Hospital Association ‘The Economic Impact of Hospital Systems in New Hampshire’ available at https://www.healthynh.com/images/PDFfiles/publications/Economic_Impact_State_Report_2014_FINAL.pdf at 3-22, accessed 22 January 2020.

³⁹⁴ Foundation for Healthy Communities & New Hampshire Hospital Association ‘The Economic Impact of Hospital Systems in New Hampshire’ available at https://www.healthynh.com/images/PDFfiles/publications/Economic_Impact_State_Report_2014_FINAL.pdf at 3-22, accessed 22 January 2020.

³⁹⁵ Foundation for Healthy Communities & New Hampshire Hospital Association ‘The Economic Impact of Hospital Systems in New Hampshire’ available at https://www.healthynh.com/images/PDFfiles/publications/Economic_Impact_State_Report_2014_FINAL.pdf at 3-22, accessed 22 January 2020.

³⁹⁶ Foundation for Healthy Communities & New Hampshire Hospital Association ‘The Economic Impact of Hospital Systems in New Hampshire’ available at https://www.healthynh.com/images/PDFfiles/publications/Economic_Impact_State_Report_2014_FINAL.pdf at 3-22, accessed 22 January 2020.

5. Conclusion

This chapter examines the socio-economic benefits of mining companies establishing mine hospitals in mine-affected communities. The primary benefits of mine hospitals are the development of health infrastructure and the provision of healthcare services to mine employees, their dependents, surrounding communities, and the employees of businesses in other industries.

The benefits of mine hospitals extend beyond health infrastructure development and healthcare provision. The secondary benefits of mine hospitals are the creation of employment opportunities that increase disposable income and the potential creation of local procurement opportunities.

Chapter 5: The Socio-Economic Consequences of Mine Hospital Closures and Ownership and Management Transfers

1. Introduction

Mine hospital closures and mine hospital ownership and management transfers sometimes have immediate adverse effects on mine-affected communities, from both social and economic perspectives. The adverse effects of mine hospital closures and mine hospital ownership and management transfers include the poor management of mine hospitals by new owners, the termination or suspension of healthcare provision, and job losses.³⁹⁷

This chapter explores the potential causes of mine hospital closures and mine hospital ownership and management transfers. The chapter considers examples of mine hospital closures and mine hospital ownership and management transfers. It examines the potential adverse effects of mine hospital closures and mine hospital ownership and management transfers on mine-affected communities.

2. Potential Causes of Mine Hospital Closures and Transfers

Numerous factors can gradually weaken a mining company's ability to run its hospital in the long-term.³⁹⁸ These include a lack of financial resources due to the cessation of mining operations,³⁹⁹ low hospital occupancy rates, and the high economic costs associated with operating in low-income communities.⁴⁰⁰ These factors can make it difficult for mining

³⁹⁷ See sections 3 and 4 of ch 5.

³⁹⁸ David Pearson *An Explanatory Study of Rural Hospital Closures and Their Links to the Economic Health of Local Communities* (Masters of Public Administration, Texas State University, 2002) at 11-33.

³⁹⁹ F.T. Cawood 'Threats to the South African minerals sector—an independent view on the investment environment for mining' (2011) 111 *The Journal of The Southern African Institute of Mining and Metallurgy* 7 at 469-474.

⁴⁰⁰ Mine-affected communities are often categorised as rural, low-income communities. These communities often cannot afford healthcare costs. Therefore, some hospitals situated in low-income communities cannot generate sufficient revenues to cover their operating expenses; see Raina M. Maier, Fernando Diaz-Barriga & James A. Field et al 'Socially responsible mining: the relationship between mining and poverty, human health and the environment' (2014) 29 *Reviews on Environmental Health* 1-2 at 83-89; and Richard E. McDermott, Gary C. Cornia & Robert J. Parsons (1991) 7 *The Journal of Rural Health* at 117-133.

companies to provide sustainable hospital services in mine-affected communities.⁴⁰¹ Therefore, mining companies may elect to close their mine hospitals or transfer the ownership and management of their mine hospitals to other entities.

2.1 Closure concomitant to the cessation of mining operations

The first reason a mining company may elect to close its mine hospital or transfer the ownership and management of its mine hospital to another entity is that it has terminated its mining operations and can no longer finance its hospital. The operations of mining companies have a finite lifespan.⁴⁰² When mining operations cease, a mining company loses its primary source of revenue and the company may not have the financial capacity to continue to manage a hospital.⁴⁰³ For example, medical technology improves at an accelerated rate.⁴⁰⁴ Millions of Rands must be invested in the advanced medical diagnostic and treatment equipment needed to provide quality healthcare.⁴⁰⁵ This is especially relevant in the mining sector where common occupational diseases such as tuberculosis require expensive specialised medical equipment to detect and treat.⁴⁰⁶ Mining companies must also incur large expenses to maintain, repair, or replace medical equipment in their hospitals.⁴⁰⁷

2.2 Dwindling hospital occupancy pursuant to Rural-urban migration

A second reason a mining company may elect to close its mine hospital or transfer the ownership and management of its mine hospital to another entity is because of the impact of

⁴⁰¹ Mining, Minerals and Sustainable Development Project 'Chapter 9: Local Communities and Mines' *International Institute for Environment and Development* April 2002 at 198-228, available at <https://pubs.iied.org/pdfs/G00901.pdf>, accessed on 17 September 2019.

⁴⁰² Mining, Minerals and Sustainable Development Project 'Chapter 9: Local Communities and Mines' *International Institute for Environment and Development* April 2002 at 198-228, available at <https://pubs.iied.org/pdfs/G00901.pdf>, accessed on 17 September 2019.

⁴⁰³ Mining, Minerals and Sustainable Development Project 'Chapter 9: Local Communities and Mines' *International Institute for Environment and Development* April 2002 at 198-228, available at <https://pubs.iied.org/pdfs/G00901.pdf>, accessed on 17 September 2019.

⁴⁰⁴ David Pearson *An Explanatory Study of Rural Hospital Closures and Their Links to the Economic Health of Local Communities* (Masters of Public Administration, Texas State University, 2002) at 11-33.

⁴⁰⁵ Coal Mines Administration: United States Department of the Interior 'A Medical Survey of the Bituminous-Coal Industry' (1947) 37 *PubMed Central* at 157.

⁴⁰⁶ World Health Organisation 'Guidelines for Infection Prevention and Control for TB including MDR-TB and XDR-TB' online July 2008 available at <https://www.who.int/hiv/pub/guidelines/malawi.pdf> at 6-27, accessed 13 November 2019.

⁴⁰⁷ David Pearson *An Explanatory Study of Rural Hospital Closures and Their Links to the Economic Health of Local Communities* (Masters of Public Administration, Texas State University, 2002) at 11-33.

rural-urban migration on hospital occupancy.⁴⁰⁸ Rural-urban migration is the movement of people moving from rural areas to urban areas.⁴⁰⁹ For example, a mining company may exhaust the available supply of mineral resources in a particular area and move its operations elsewhere.

Typically, when mining operations in rural and remote areas cease and a mining company takes its business elsewhere, there is an outflow of people from that area to other more economically viable areas.⁴¹⁰ This is because mining in rural areas is often the primary economic activity supporting those areas by, *inter alia*, providing employment opportunities, and promoting procurement.⁴¹¹ Studies have shown that rural hospitals often have lower hospital occupancy rates than urban hospitals due to mass migration.⁴¹² Some mining companies argue that mine hospitals cannot serve underpopulated regions as it is not economically viable for mining companies.⁴¹³

2.3 Affordability

A third reason a mining company may decide to close its mine hospital or transfer the ownership and management of its mine hospital to another entity is because of the high economic costs associated with running a hospital in a low-income community. Hospitals in rural communities face many challenges in remaining financially viable while providing quality healthcare services to community members.⁴¹⁴

⁴⁰⁸ Fidelis Emuze & Cornel Hauptfleisch 'The impact of mining induced urbanization: a case study of Kathu in South Africa' (2014) 4 *Journal of Construction Project Management and Innovation* 2 at 882-887; and David Pearson *An Explanatory Study of Rural Hospital Closures and Their Links to the Economic Health of Local Communities* (Masters of Public Administration, Texas State University, 2002) at 11-33.

⁴⁰⁹ Fidelis Emuze & Cornel Hauptfleisch (2014) 4 *Journal of Construction Project Management and Innovation* at 882-887

⁴¹⁰ Fidelis Emuze & Cornel Hauptfleisch (2014) 4 *Journal of Construction Project Management and Innovation* at 882-887.

⁴¹¹ Fidelis Emuze & Cornel Hauptfleisch (2014) 4 *Journal of Construction Project Management and Innovation* at 882-887.

⁴¹² Fidelis Emuze & Cornel Hauptfleisch (2014) 4 *Journal of Construction Project Management and Innovation* at 882-887.

⁴¹³ Deborah Spicer 'The big mine-hospital debate' available at <https://www.engineeringnews.co.za/article/the-big-minehospital-debate-2003-05-05>, accessed on 5 June 2019.

⁴¹⁴ *National Center for Rural Health Works* Fred C. Eilrich, Gerald A. Doeksen & Cheryl F. St. Clair et al 'The Economic Impact of Recent Hospital Closures on Rural Communities' National Center for Rural Health Works online July 2015, available at <http://ruralhealthworks.org/wp-content/uploads/2018/04/Impact-of-HospitalClosure-August-2015.pdf> accessed 8 November 2019.

Patients in rural areas often have lower incomes and insufficient medical insurance.⁴¹⁵ Studies show that hospitals in rural areas generally have higher rates of uncompensated medical care because most individuals in rural communities cannot cover their medical expenses.⁴¹⁶

3. Dealing with Hospital Closures and Transfers

This section discusses two cases involving a mine hospital closure and a mine hospital ownership and management transfer: the West Vaal Hospital in the North-West province and the Blyvooruitzicht Hospital in the Gauteng Province, the latter being an example of closure and abandonment. While it is impossible to draw overarching conclusions about the impacts of mine hospital closures and mine hospital ownership and management transfers more generally, these examples highlight the possible negative impacts of mine hospital closures and mine hospital ownership and management transfers.

When the causes for an ownership and management transfer or closure kicked in, the mining companies in both cases terminated or ‘abandoned’ their responsibilities for the control and funding of the mine hospitals. Where the mine hospital was closed, the relevant mining company did not remove the remaining health infrastructure and equipment.⁴¹⁷

3.1 The West Vaal Hospital

Situated in the town of Orkney in the North-West Province,⁴¹⁸ the West Vaal Hospital was established by the gold mining company AngloGold Ashanti.⁴¹⁹ The purpose was to provide healthcare to the mining company’s employees working at the local mine site, their dependents,

⁴¹⁵ David Pearson *An Explanatory Study of Rural Hospital Closures and Their Links to the Economic Health of Local Communities* (Masters of Public Administration, Texas State University, 2002) at 11-33.

⁴¹⁶ David Pearson *An Explanatory Study of Rural Hospital Closures and Their Links to the Economic Health of Local Communities* (Masters of Public Administration, Texas State University, 2002) at 11-33.

⁴¹⁷ *International Federation for Human Rights* Lawyers for Human Rights ‘Blyvooruitzicht Mine Village: the human toll of state and corporate abdication of responsibility in South Africa’ International Federation for Human Rights online January 2017, available at <https://www.lhr.org.za/publications/blyvooruitzicht-mine-village-human-toll-state-and-corporate-abdication-responsibility-s-at-10-14>, accessed 12 November 2019.

⁴¹⁸ Peter Drotman ‘Foodborne Infections’ (2010) 16 *Emerging Infectious Diseases* 1 at 270.

⁴¹⁹ Peter Drotman (2010) 16 *Emerging Infectious Diseases* at 270.

and surrounding communities.⁴²⁰ The hospital's services include the diagnosis and treatment of the diseases prevalent in the mining sector such as tuberculosis.⁴²¹

In January 2018, AngloGold Ashanti transferred ownership and management of the West Vaal Hospital to Phodiso Clinics,⁴²² a subsidiary company of the Phodiso Holdings Limited group.⁴²³ Phodiso Holdings Limited invests in and manages several hospitals and clinics in South Africa.⁴²⁴ After the transfer of ownership and management of the West Vaal Hospital, the newly appointed owners and managers, Phodiso Clinics, failed to pay the salaries of approximately 70 hospital employees for several months.⁴²⁵ Conflict also arose between the hospital managers and employees about the payment of pensions and tax.⁴²⁶ The hospital managers implicated JM Capital Africa, a financial advisory firm.⁴²⁷ The managers contended that JM Capital Africa was responsible for the financial management of the hospital.⁴²⁸

⁴²⁰ Peter Drotman (2010) 16 *Emerging Infectious Diseases* at 270.

⁴²¹ Q. Ashton Acton *Extensively Drug-Resistant Tuberculosis: New Insights for the Healthcare Professional* (2011) at 18; see Annexure 2 to this dissertation for a table depicting the health hazards and impacts associated with different types of mining activity.

⁴²² See in-studio interview of the representatives of Phodiso Clinics on eNCA at *eNCA Digital News* 'No salaries paid for four months in West Vaal' 27 June 2019, available at <https://newsvideo.su/video/10957917> accessed 20 January 2020; and eNCA 'West Vaal Hospital employees unpaid for four months' online 27 June 2019; *SABC Digital News* 'Operations at Westvaal Polyclinic halted' 4 July 2019, available at <https://www.youtube.com/watch?v=AzRTHyiWem8&t=61s> accessed 23 November 2019; eNCA 'West Vaal Hospital employees unpaid for four months' online 27 June 2019, available at <https://www.enca.com/news/west-vaal-hospital-employees-unpaid-four-months> accessed 8 November 2019; and National Union of Mine Workers 'NUM is deeply worried about AngloGold Ashanti's decision to suspend three of its West Vaal Branch in Matlosana' available at <https://num.org.za/News-Reports-Speeches/ArticleID/858/NUM-is-deeply-worried-about-AngloGold-Ashantis-decision-to-suspend-three-of-its-West-Vaal-Branch-in-Matlosana> accessed 13 November 2019.

⁴²³ Phodiso Holdings Limited available <http://www.phodiso.co.za/> at accessed 12 November 2019.

⁴²⁴ Phodiso Holdings Limited available <http://www.phodiso.co.za/> at accessed 12 November 2019.

⁴²⁵ eNCA 'West Vaal Hospital employees unpaid for four months' online 27 June 2019, available at <https://www.enca.com/news/west-vaal-hospital-employees-unpaid-four-months> accessed 8 November 2019; *SABC Digital News* 'Operations at Westvaal Polyclinic halted' (2019); and National Union of Mine Workers 'NUM is deeply worried about AngloGold Ashanti's decision to suspend three of its West Vaal Branch in Matlosana' available at <https://num.org.za/News-Reports-Speeches/ArticleID/858/NUM-is-deeply-worried-about-AngloGold-Ashantis-decision-to-suspend-three-of-its-West-Vaal-Branch-in-Matlosana> accessed 13 November 2019.

⁴²⁶ *SABC Digital News* 'Operations at Westvaal Polyclinic halted' (2019); eNCA 'West Vaal Hospital employees unpaid for four months' (2019); and National Union of Mine Workers 'NUM is deeply worried about AngloGold Ashanti's decision to suspend three of its West Vaal Branch in Matlosana'.

⁴²⁷ See in-studio interview of the representatives of Phodiso Clinics on eNCA at *eNCA Digital News* 'No salaries paid for four months in West Vaal' (2019); and eNCA 'West Vaal Hospital employees unpaid for four months' (2019); *SABC Digital News* 'Operations at Westvaal Polyclinic halted' (2019); and National Union of Mine Workers 'NUM is deeply worried about AngloGold Ashanti's decision to suspend three of its West Vaal Branch in Matlosana'.

⁴²⁸ See in-studio interview of the representatives of Phodiso Clinics on eNCA at *eNCA Digital News* 'No salaries paid for four months in West Vaal' (2019); and eNCA 'West Vaal Hospital employees unpaid for four months' (2019); *SABC Digital News* 'Operations at Westvaal Polyclinic halted' (2019); and National Union of Mine Workers 'NUM is deeply worried about AngloGold Ashanti's decision to suspend three of its West Vaal Branch in Matlosana'; and eNCA 'West Vaal Hospital employees unpaid for four months' (2019).

The issues surrounding the West Vaal Hospital received extensive media attention.⁴²⁹ Although most departments of the hospital were not operational in 2019, some hospital employees still arrived for work each day.⁴³⁰ These hospital employees performed minimal administrative and maintenance duties, without receiving compensation, to prevent the hospital from completely collapsing.⁴³¹ The suspension of healthcare services has left the surrounding communities in a state of crisis.⁴³² The inability of hospital employees to receive salaries to meet their needs and those of their dependants have harmed their livelihood outcomes.⁴³³

After AngloGold Ashanti transferred ownership and management of the hospital and closed all its clinics in the region, the West Vaal Hospital suspended the provision of its healthcare services.⁴³⁴ The affected community members are to seek healthcare services at alternative healthcare facilities such as the state hospital in the region, the Klerksdorp Tshepong Hospital.⁴³⁵ However, Klerksdorp Tshepong Hospital is currently overburdened and the inflow of patients adds more strain to the hospital.⁴³⁶

⁴²⁹ *eNCA Digital News* 'No salaries paid for four months' (2019); *ABC Digital News* 'Operations at Westvaal Polyclinic halted' (2019); *eNCA Digital News* 'No salaries paid for four months in West Vaal' 27 June 2019, available at <https://newsvideo.su/video/10957917> accessed 20 January 2020; National Union of Mine Workers 'NUM is deeply worried about AngloGold Ashanti's decision to suspend three of its West Vaal Branch in Matlosana'.

⁴³⁰ *eNCA* 'West Vaal Hospital employees unpaid for four months' (2019); *SABC Digital News* 'Operations at Westvaal Polyclinic halted' (2019); and National Union of Mine Workers 'NUM is deeply worried about AngloGold Ashanti's decision to suspend three of its West Vaal Branch in Matlosana'.

⁴³¹ *SABC Digital News* 'Operations at Westvaal Polyclinic halted' (2019); *eNCA* 'West Vaal Hospital employees unpaid for four months' (2019); and National Union of Mine Workers 'NUM is deeply worried about AngloGold Ashanti's decision to suspend three of its West Vaal Branch in Matlosana'.

⁴³² *SABC Digital News* 'Operations at Westvaal Polyclinic halted' (2019); *eNCA* 'West Vaal Hospital employees unpaid for four months' (2019); and National Union of Mine Workers 'NUM is deeply worried about AngloGold Ashanti's decision to suspend three of its West Vaal Branch in Matlosana'.

⁴³³ *eNCA* 'West Vaal Hospital employees unpaid for four months' (2019); *SABC Digital News* 'Operations at Westvaal Polyclinic halted' (2019); and National Union of Mine Workers 'NUM is deeply worried about AngloGold Ashanti's decision to suspend three of its West Vaal Branch in Matlosana'.

⁴³⁴ See section 3 of ch 5.

⁴³⁵ Medical Brief: Africa's Medical News Digest 'Doctors plead for resolution of North Wes Health crisis' online 25 April 2018, available at <https://www.medicalbrief.co.za/archives/doctors-plead-resolution-north-west-health-crisis/> accessed 13 November 2019.

⁴³⁶ Medical Brief: Africa's Medical News Digest 'Doctors plead for resolution of North Wes Health crisis' (2018).

3.2 The Blyvooruitzicht mine hospital

The mine hospital that was situated in the village of Blyvooruitzicht in the Gauteng Province⁴³⁷ was established and operated by the Blyvooruitzicht Gold Mining Company.⁴³⁸ The hospital provided free healthcare services to the mining company's employees, their dependents, and the residents of Blyvooruitzicht.⁴³⁹ The hospital's services include the diagnosis and treatment of the diseases, including diseases prevalent in the mining sector.⁴⁴⁰

In 2013, the Blyvooruitzicht Gold Mining Company announced that it would be put under liquidation, mainly due to cost escalations and the need for the company to settle its outstanding debts.⁴⁴¹ Thereafter, the mining company was liquidated and the Blyvooruitzicht mine hospital closed.⁴⁴² The delivery of healthcare services to residents of Blyvooruitzicht was terminated.⁴⁴³ Approximately 900 households (or 6000 residents) were affected.⁴⁴⁴ Criminals and gangs involved in illegal mining looted and vandalised the remaining hospital equipment and infrastructure.⁴⁴⁵ Community members expressed concerns about the safety of vulnerable residents (such as women and children) due to the criminal activities in the area.⁴⁴⁶

⁴³⁷ *International Federation for Human Rights* Lawyers for Human Rights 'Blyvooruitzicht Mine Village: the human toll of state and corporate abdication of responsibility in South Africa' *International Federation for Human Rights* online January 2017, available at <https://www.lhr.org.za/publications/blyvooruitzicht-mine-village-human-toll-state-and-corporate-abdication-responsibility-s> at 10-14, accessed 12 November 2019.

⁴³⁸ *International Federation for Human Rights* Lawyers for Human Rights 'Blyvooruitzicht Mine Village: the human toll of state and corporate abdication of responsibility in South Africa' (2017).

⁴³⁹ *International Federation for Human Rights* Lawyers for Human Rights 'Blyvooruitzicht Mine Village: the human toll of state and corporate abdication of responsibility in South Africa' (2017).

⁴⁴⁰ *International Federation for Human Rights* Lawyers for Human Rights 'Blyvooruitzicht Mine Village: the human toll of state and corporate abdication of responsibility in South Africa' (2017).; see Annexure 2 to this dissertation for a table depicting the health hazards and impacts associated with different types of mining activity.

⁴⁴¹ *International Federation for Human Rights* Lawyers for Human Rights 'Blyvooruitzicht Mine Village: the human toll of state and corporate abdication of responsibility in South Africa' (2017).

⁴⁴² *International Federation for Human Rights* Lawyers for Human Rights 'Blyvooruitzicht Mine Village: the human toll of state and corporate abdication of responsibility in South Africa' (2017).

⁴⁴³ *International Federation for Human Rights* Lawyers for Human Rights 'Blyvooruitzicht Mine Village: the human toll of state and corporate abdication of responsibility in South Africa' (2017).

⁴⁴⁴ *City Press* Lesetja Malope 'From gold to dust: How a once-thriving community was reduced to ruin' *City Press* online 10 October 2019, available at <https://city-press.news24.com/Business/from-gold-to-dust-how-a-once-thriving-community-was-reduced-to-ruin-20191010> accessed 10 November 2019; and Business & Human Rights Resource Centre 'South Africa: Withdrawal of gold mining impacts on community in Blyvooruitzicht Mine Village' available at <https://www.business-humanrights.org/en/south-africa-withdrawal-of-gold-mining-impacts-on-community-in-blyvooruitzicht-mine-village> at 10-14, accessed 13 November 2019.

⁴⁴⁵ *City Press* Lesetja Malope 'From gold to dust: How a once-thriving community was reduced to ruin' (2019); *Sowetan Live* Lindile Sifile 'Dreams lie in the mine dust' *Sowetan Live* online 25 August 2016, available at <https://www.sowetanlive.co.za/news/2016-08-25-dreams-lie-in-mine-dust/> accessed 20 January 2019; and *International Federation for Human Rights* Lawyers for Human Rights 'Blyvooruitzicht Mine Village: the human toll of state and corporate abdication of responsibility in South Africa' (2017).

⁴⁴⁶ *City Press* Lesetja Malope 'From gold to dust: How a once-thriving community was reduced to ruin' (2019).

4. Socio-Economic Impacts of Mine Hospital Closures and Transfer

This section outlines how mine-affected communities may be impacted when a mining company decides to close its mine hospital or transfer the ownership and management of its hospital to another entity. Without placing blame or responsibility upon mining companies, this section highlights the negative impacts of mine hospital closures and mine hospital ownership and management transfers.

4.1 Disruption in the Provision of Healthcare Services

Mine hospitals are often the hub of the healthcare system in rural and remote communities.⁴⁴⁷ When mine hospitals in these areas close or the new owners of mine hospitals manage the hospitals inefficiently, communities have few alternative healthcare options.⁴⁴⁸ For example, the termination and suspension of healthcare services at the Blyvooruitzicht mine hospital and the West Vaal Hospital left the communities without access to healthcare services.

Furthermore, in cases where mine hospitals offer higher quality or more affordable healthcare than public and private hospitals in mine-affected communities, community members will be subjected to lower quality or more expensive healthcare at alternative facilities.⁴⁴⁹ Community members may also have to travel far for alternative healthcare.⁴⁵⁰ This increased travel distance reduces access to healthcare in mine-affected communities.⁴⁵¹

4.2 Reduced Employment Opportunities

Mining companies may establish mine hospitals that are among the primary employers in mine-affected communities.⁴⁵² When a mine hospital is closed or is inefficiently managed by its new owners, this reduces the employment levels in a community or creates the threat of job

⁴⁴⁷ Zeenat Dasoo 'An analysis of the employment of medical practitioners in South Africa: keynote address presented by Ms Zeenat Dasoo at the MPPA 16th Annual Congress, August 2013' (2014) 20 *Occupational Health Southern Africa* at 24-27.

⁴⁴⁸ Richard E. Doelker, Jr. Bonnie C. Bedics (1989) 6 *Social Work* at 541-543.

⁴⁴⁹ Terri Brame 'The Immediate Effects of Rural Hospital Closures' (2017) 117 *American Journal of Nursing* 11 at 10; and Richard E. Doelker, Jr. Bonnie C. Bedics (1989) 6 *Social Work* at 541-543.

⁴⁵⁰ Richard E. Doelker, Jr. Bonnie C. Bedics (1989) 6 *Social Work* at 541-543.

⁴⁵¹ *National Center for Rural Health Works* Fred C. Eilrich, Gerald A. Doeksen & Cheryl F. St. Clair et al 'The Economic Impact of Recent Hospital Closures on Rural Communities' National Center for Rural Health Works online July 2015, available at <http://ruralhealthworks.org/wp-content/uploads/2018/04/Impact-of-HospitalClosure-August-2015.pdf> accessed 8 November 2019.

⁴⁵² See ch 4.

insecurity.⁴⁵³ For example, the employees at Blyvooruitzicht mine hospital lost their source of income and livelihood when the mine hospital closed.⁴⁵⁴ Additionally, the inability of employees at the West Vaal Hospital to receive their salaries had adverse effects on their livelihood outcomes.⁴⁵⁵

Further, some healthcare professionals in the mining sector have specialised skills that make it difficult for them to find work outside of the mine-health sector.⁴⁵⁶ These healthcare professionals include pulmonologists (who specialise in the treatment of respiratory conditions prevalent in the mining sector such as asthma, silicosis, and tuberculosis)⁴⁵⁷ and otolaryngologists (who specialise in the treatment of hearing impairment such as Noise-Induced Hearing Loss).⁴⁵⁸ Additionally, when a mining company closes a mine hospital, the medical specialists (such as occupational physicians and occupational health nurses and psychologists) employed at that hospital are also likely to leave that community.⁴⁵⁹ It becomes economically unfeasible for them to practice in rural communities, especially when the remaining hospitals have low-occupancy rates due to rural-urban migration.⁴⁶⁰

4.3 Shrinking Local Economy

Mine hospital closures can also lead to a decline in a local community's economic base.⁴⁶¹ The closure of mine hospitals leads to the reduction of disposable income in mine-affected

⁴⁵³ Linda Starke 'Local Communities and Mines' in Linda Starke *Breaking New Ground: Mining, Minerals and Sustainable Development* (2002) at 205.

⁴⁵⁴ City Press Lesetja Malope 'From gold to dust: How a once-thriving community was reduced to ruin' (2019); and Business & Human Rights Resource Centre 'South Africa: Withdrawal of gold mining impacts on community in Blyvooruitzicht Mine Village' available at <https://www.business-humanrights.org/en/south-africa-withdrawal-of-gold-mining-impacts-on-community-in-blyvooruitzicht-mine-village> at 10-14, accessed 13 November 2019.

⁴⁵⁵ eNCA 'West Vaal Hospital employees unpaid for four months' (2019); SABC Digital News 'Operations at Westvaal Polyclinic halted' (2019); and National Union of Mine Workers 'NUM is deeply worried about AngloGold Ashanti's decision to suspend three of its West Vaal Branch in Matlosana' available at <https://num.org.za/News-Reports-Speeches/ArticleID/858/NUM-is-deeply-worried-about-AngloGold-Ashantis-decision-to-suspend-three-of-its-West-Vaal-Branch-in-Matlosana> accessed 13 November 2019.

⁴⁵⁶ Richard E. Doelker, Jr. Bonnie C. Bedics (1989) 6 *Social Work* at 541-543.

⁴⁵⁷ Leonard HT Go, Silpa D. Krefft & Robert A. Cohen et al 'Lung disease and coal mining: What pulmonologists need to know' 22 *Current Opinion in Pulmonary Medicine* 2 at 170-178.

⁴⁵⁸ Miningsafety.co.za 'Hearing and Mining Safety' available at <https://www.miningsafety.co.za/dynamiccontent/63/Hearing-and-Mining-Safety>, accessed 9 February 2020.

⁴⁵⁹ Deborah Spicer 'The big mine-hospital debate' available at <http://m.engineeringnews.co.za/article/the-big-minehospital-debate-2003-05-05>, accessed on 22 January 2020.

⁴⁶⁰ Richard E. Doelker, Jr. Bonnie C. Bedics (1989) 6 *Social Work* at 541-543.

⁴⁶¹ See section 2 of ch 5; Richard E. Doelker, Jr. Bonnie C. Bedics (1989) 6 *Social Work* at 541-543.

⁴⁶¹ National Center for Rural Health Works Fred C. Eilrich, Gerald A. Doeksen & Cheryl F. St. Clair et al 'The Economic Impact of Recent Hospital Closures on Rural Communities' National Center for Rural Health Works online July 2015, available at <http://ruralhealthworks.org/wp-content/uploads/2018/04/Impact-of-HospitalClosure-August-2015.pdf> accessed 8 November 2019.

communities.⁴⁶² Further, businesses in other industries are often hesitant to operate in communities that do not have the basic social infrastructure (such as hospitals) that is accessible to their employees or communities that have inefficiently managed hospitals.⁴⁶³ The local enterprises (such as construction and furniture businesses) engaged through procurement by the mine hospitals⁴⁶⁴ (discussed in chapter 4) may suffer adverse effects when the mine hospitals close.⁴⁶⁵

4.4 Overburdened Health System

South Africa's public health system is overburdened.⁴⁶⁶ In many public hospitals, the number of medical patients exceeds the number of medical inpatient beds.⁴⁶⁷ Healthcare workers are also overstretched which increases delays in healthcare delivery.⁴⁶⁸ This negatively impacts the quality and accessibility of healthcare in South Africa.⁴⁶⁹

Given the essential role mining companies play in assisting the government to fulfil its legal mandate to ensure healthcare access by providing healthcare services to mine employees and the public (chapter 3),⁴⁷⁰ when a mine hospital is closed or poorly managed, community members are forced to seek alternative healthcare institutions.⁴⁷¹ This adds pressure to the already burdened public health system and adversely impacts the accessibility of healthcare in

⁴⁶² Marietjie Ackermann, Doret Botha & Gerrit van der Waldd (2018) 14 *The Journal of Transdisciplinary Research in Southern Africa* at 1-11.

⁴⁶³ Terri Brame (2017) 117 *American Journal of Nursing* at 10.

National Center for Rural Health Works Fred C. Eilrich, Gerald A. Doeksen & Cheryl F. St. Clair et al 'The Economic Impact of Recent Hospital Closures on Rural Communities' National Center for Rural Health Works online July 2015, available at <http://ruralhealthworks.org/wp-content/uploads/2018/04/Impact-of-HospitalClosure-August-2015.pdf> accessed 8 November 2019.

⁴⁶⁴ Foundation for Healthy Communities and Hampshire Hospital Association 'The Economic Impact of Hospital Systems in New Hampshire' available at https://www.healthynh.com/images/PDFfiles/publications/Economic_Impact_State_Report_2014_FINAL.pdf accessed 17 June 2019.

⁴⁶⁵ L. Marais, J. Cloete & S. Denoon-Stevens (2018) *The Journal of the Southern Institute of Mining and Metallurgy* at 1103-111.

⁴⁶⁶ Winnie T. Maphumalo & Busisiwe R. Bhengu 'Challenges of quality improvement in the healthcare of South Africa post-apartheid: A critical review' (2019) 42 *Curationis* 1 at 1-9.

⁴⁶⁷ Winnie T. Maphumalo & Busisiwe R. Bhengu (2019) 42 *Curationis* 1 at 1-9.

⁴⁶⁸ Winnie T. Maphumalo & Busisiwe R. Bhengu (2019) 42 *Curationis* 1 at 1-9.

⁴⁶⁹ Winnie T. Maphumalo & Busisiwe R. Bhengu (2019) 42 *Curationis* 1 at 1-9.

⁴⁷⁰ See section 3 of ch 3.

⁴⁷¹ Richard E. Doelker, Jr. Bonnie C. Bedics (1989) 6 *Social Work* at 541-543.

mine-affected communities. The dire situation is illustrated by the example of the West Vaal Hospital,⁴⁷² discussed above.

4.5 Spread of Communicable Diseases

The prevention or minimisation of the transmission of communicable diseases is one of the core functions of a healthcare institution.⁴⁷³ The mining sector often operates in areas where the public health system is inadequate and there is ineffective control of communicable diseases.⁴⁷⁴ Mine hospitals cater to patients with commonly contracted diseases in the mining sector such as tuberculosis and HIV.⁴⁷⁵ Tuberculosis and HIV are examples of communicable diseases.⁴⁷⁶ Mine employees, their dependents, and surrounding communities are especially vulnerable to these diseases.⁴⁷⁷ Mine hospitals that are disease-specific institutions serve as mechanisms for the prevention of the transmission of communicable diseases.⁴⁷⁸ However, when patients with communicable diseases are transferred from mine hospitals to general hospitals, specifically after mine hospital closures, this contributes to the risk of outbreaks and the transfer of communicable diseases at general hospitals.⁴⁷⁹

4.6 Underutilisation of Health Infrastructure and Crime

When mine hospitals close, the infrastructure (such as hospital buildings) is left vacant and unoccupied in some cases.⁴⁸⁰ The outcome is the waste of financial (e.g. funding) and physical (e.g. premises and medical equipment and technology) resources that are much-needed in South Africa's healthcare sector.⁴⁸¹

⁴⁷² Medical Brief: Africa's Medical News Digest 'Doctors plead for resolution of North Wes Health crisis' online 25 April 2018, available at <https://www.medicalbrief.co.za/archives/doctors-plead-resolution-north-west-health-crisis/> accessed 13 November 2019.

⁴⁷³ Douglas F. Scott & R. Larry Grayson 'Selected Health Issues in Mining' online February 2003, available at <https://www.cdc.gov/niosh/mining/userfiles/works/pdfs/shiim.pdf> at 5, accessed 14 November 2019.

⁴⁷⁴ Douglas F. Scott & R. Larry Grayson 'Selected Health Issues in Mining' (2003).

⁴⁷⁵ Zeenat Dasoo 'An analysis of the employment of medical practitioners in South Africa: keynote address presented by Ms Zeenat Dasoo at the MMPA 16th Annual Congress, August 2013' (2014) 20 *Occupational Health Southern Africa* at 24-27.

⁴⁷⁶ Douglas F. Scott & R. Larry Grayson 'Selected Health Issues in Mining' (2003).

⁴⁷⁷ Douglas F. Scott & R. Larry Grayson 'Selected Health Issues in Mining' (2003).

⁴⁷⁸ Douglas F. Scott & R. Larry Grayson 'Selected Health Issues in Mining' (2003).

⁴⁷⁹ Douglas F. Scott & R. Larry Grayson 'Selected Health Issues in Mining' (2003).

⁴⁸⁰ *City Press* Lesetja Malope 'From gold to dust: How a once-thriving community was reduced to ruin' (2019); *Sowetan Live* Lindile Sifile 'Dreams lie in the mine dust' (2016); and *International Federation for Human Rights Lawyers for Human Rights* 'Blyvooruitzicht Mine Village: the human toll of state and corporate abdication of responsibility in South Africa' (2017).

⁴⁸¹ South African Human Rights Commission 'Public Inquiry: Access to Health Care Services' (2017) at 39.

Vacant and abandoned buildings also have negative impacts on the safety of surrounding communities.⁴⁸² This is because vacant and abandoned buildings are characterised by higher crime rates.⁴⁸³ Abandonment signals to prospective offenders that committing a criminal offense is unpunishable because it is likely to go unseen and unchallenged.⁴⁸⁴ Closed and abandoned mine hospitals could attract crime, as they provide cover, concealment, and opportunities for potential criminals in the area.⁴⁸⁵

The former Blyvooruitzicht mine hospital is an example of an abandoned building that can be entered without the use of force.⁴⁸⁶ Illegal miners and property criminals have illegally occupied the area and engaged in criminal activities such as theft and vandalism.⁴⁸⁷ Further, a representative of the community reports that approximately 40 people have been killed in the area because of violent fights between gangs involved in illegal mining.⁴⁸⁸

5. Conclusion

Mine hospital closures and mine hospital ownership and management transfers do not always have negative impacts on mine-affected communities. The negative impacts of mine hospital closures and mine hospital ownership and management transfers also cannot necessarily be attributed to mining companies. Mining companies are not necessarily responsible for the negative impacts of mine hospital closures and mine hospital ownership and management transfers. In fact, as chapters 3 and 4 acknowledge, mining companies often establish mine hospitals that provide services and opportunities that did not exist in mine-affected communities before the establishment of the hospitals.

Mining companies are not expected to assume the government's responsibilities, for example, for the development of social infrastructures such as hospitals and the provision of healthcare services.⁴⁸⁹ However, the reality is that mining companies do assume these responsibilities and when mining companies terminate their control or funding of mine

⁴⁸² William Spelman 'Abandoned Buildings: Magnets for Crime?' (1993) 21 *Journal of Criminal Justice* at 481-495.

⁴⁸³ William Spelman (1993) 21 *Journal of Criminal Justice* at 481-495.

⁴⁸⁴ William Spelman (1993) 21 *Journal of Criminal Justice* at 481-495.

⁴⁸⁵ William Spelman (1993) 21 *Journal of Criminal Justice* at 481-495.

⁴⁸⁶ *City Press* Lesetja Malope 'From gold to dust: How a once-thriving community was reduced to ruin' (2019).

⁴⁸⁷ *City Press* Lesetja Malope 'From gold to dust: How a once-thriving community was reduced to ruin' (2019).

⁴⁸⁸ *City Press* Lesetja Malope 'From gold to dust: How a once-thriving community was reduced to ruin' (2019).

⁴⁸⁹ L. Marais, J. Cloete & S. Denoon-Stevens (2018) *The Journal of the Southern African Institute of Mining and Metallurgy* at 1103-1111.

hospitals, mine-affected communities are left even more destitute than before the operation of mine hospitals in their communities.⁴⁹⁰ Therefore, it is important that the legal framework recognises the socio-economic importance of mine hospitals in mine-affected communities and develops legal measures for protecting the resource that is the network of mine hospitals.

⁴⁹⁰ See section 4 of ch 5.

Chapter 6: Recommendations

1. Introduction

Mine-affected communities across South Africa mostly rely on mine hospitals for the provision of healthcare services.⁴⁹¹ Mine hospitals also contribute to the creation of employment opportunities and can promote local procurement.⁴⁹² This is especially the case in mine-affected communities that are categorised as remote and impoverished.⁴⁹³ Against this operating background, the state and mining companies ought to consider the decision-making policies and accompanying procedures for mine hospital establishments, ownership and management transfers, and closures.⁴⁹⁴

This chapter provides recommendations on the policies and procedures that should be developed and implemented before, during, and after mine hospital establishments, ownership and management transfers and closures. The chapter also identifies the respective roles and responsibilities of the government, mining companies, and mine-affected communities.

2. Proposed Regulatory Changes Pertaining to Mine Hospitals

Chapter 3 discussed the legal framework for mine hospitals. It examined relevant provisions of the Mine Health and Safety Act,⁴⁹⁵ the National Health Act (NHA),⁴⁹⁶ and the Regulations Governing Private Hospitals and Unattached Operating Theatre Units (national Regulations).⁴⁹⁷ The chapter illustrated how these provisions apply in the context of mine hospitals. It also identified loopholes in the current regulation of mine hospitals because mine hospitals differ from general private hospitals and workplace-based healthcare systems.

⁴⁹¹ See, in general, ch 2 and section 2 of ch 4.

⁴⁹² See s(s) 3 and 4 of ch 4.

⁴⁹³ National Health Insurance 'NHI and Workplace Healthcare' available at <http://ipasa.co.za/Downloads/Policy%20and%20Reports%20-%20General%20Health/NHI/policy%20brief%2015/IMSA%20NHI%20Policy%20Brief%2015%20NHI%20and%20Workplace%20Healthcare%20vF.pdf> at 1-16, accessed on 16 May 2019.

⁴⁹⁴ Ch 5 examines the socio-economic impacts of mine hospital ownership and management transfers and closures in mine-affected communities.

⁴⁹⁵ Mine Health and Safety Act 29 of 1996.

⁴⁹⁶ National Health Act 61 of 2013.

⁴⁹⁷ Regulations Governing Private Hospitals and Unattached Operating Theatre Units (as amended) in GN 158 of 1 February 1980.

It is recommended that the legal framework creates a separate category for mine hospitals which will attract different legal rules. Legislative provisions should be developed to guide mining companies to prevent or mitigate the adverse effects of mine hospital closures and ownership and management transfers.⁴⁹⁸ These provisions should emphasise the importance of improving the mine industry's governance of mine hospitals.

This section provides recommendations for how mine hospitals should be regulated to address certain shortcomings in the current legal framework. The sub-sections below outline specific provisions that should be included in the framework governing mine hospitals.

2.1 Mine Hospital Establishments

The legal framework ought to recognise mine hospitals as institutions separate from general private hospitals or standard workplace-based healthcare systems by assigning a specific meaning to 'mine hospitals'. Mine hospitals differ from general private hospitals or standard workplace-based healthcare systems because mine hospitals have different objectives and impacts on the societies in which they operate.⁴⁹⁹ Mine hospitals, unlike most private hospitals, usually operate in rural and remote communities and therefore often cater to poor, vulnerable, and disadvantaged individuals.⁵⁰⁰ Mining companies also have a mandate to provide healthcare services to their employees and may establish mine hospitals to fulfil this legal obligation.⁵⁰¹ Further, mining companies extend the provision of healthcare services to mine-affected communities which goes beyond the responsibilities of a standard workplace-based healthcare system.⁵⁰²

The recommendation is that the National Health Act and the Regulations Governing Private Hospitals and Unattached Operating Theatre Units, for example, is amended to include the following definition of mine hospitals: *a private health establishment (as defined in the National Health Act 61 of 2003) or private hospital (as defined in the Regulations Governing Private Hospitals and Unattached Operating Theatre Units (as amended) in GN 158 of 1*

⁴⁹⁸ The adverse effects of mine hospital closures and ownership and management transfers include the poor management of mine hospitals, the termination or suspension of healthcare services and job losses; see chapter 5 for a detailed discussion.

⁴⁹⁹ See section 3.1 of ch 3.

⁵⁰⁰ See, in general, ch 1 and 2.

⁵⁰¹ See section 4 of ch 3.

⁵⁰² See section 2 of ch 4.

February 1980) that is owned and controlled by a mining company and is operated or designed to provide health services to mine employees, their dependents, and mine-affected communities.

Before a mining company can establish and run a mine hospital, it is recommended that all the relevant stakeholders (including mining companies, local communities, and the government) should be involved in making decisions concerning infrastructure development in mine-affected communities.⁵⁰³ The following procedure is proposed: a mining company should first obtain a certificate of need from the Director-General of the Department of Health as required in terms of the NHA⁵⁰⁴ and the Director-General of the Department of Mineral Resources and Energy. However, the Director-General of the Department of Mineral Resources and Energy should consult with the relevant Provincial Department of Mineral Resources and Energy and the relevant municipality before issuing a certificate of need. Therefore, the Department of Health and the Department of Mineral Resources and Energy ought to have concurrent power to grant a certificate of need to a mining company that intends to establish a mine hospital in a mine-affected community. The application process for the certificate of need may be streamlined. A mining company may for instance be presented with a single application form to submit to the two departments and a single certificate of need representing the outcome of both departments can be issued once the process at both levels is completed.

The NHA prescribes a list of factors that the Director-General of the Department of Health must consider before issuing a certificate of need.⁵⁰⁵ Some of these factors are highlighted in chapter 3.⁵⁰⁶ Similarly, the recommendation is that the Director-General of the Department of Mineral Resources and Energy should consider several factors before issuing a certificate of need. These factors may include: the need to promote an equitable distribution of mine hospitals in mine-affected communities, the potential benefits of mine hospitals for the improvement of healthcare delivery and employment and procurement opportunities; and the probability of the financial sustainability of the mine hospital in the mine-affected community. Therefore, the consideration of an application for a certificate of need by a mining company should involve the input of the Department of Health and the Department of Mineral Resources and Energy.

⁵⁰³ Sihlangu Ngobese *Examining the socio-economic impact of mining on the livelihoods of Amajuba District Mining Communities* (unpublished LLM thesis, University of KwaZulu-Natal, 2015) at 44-55.

⁵⁰⁴ Section 36(1) of the NHA.

⁵⁰⁵ Section 36(3) of the NHA.

⁵⁰⁶ See section 3.1 of ch 3.

After a mining company has received a positive outcome from both departments and is granted a certificate of need, the mining company should obtain a certificate of registration from the Director-General of the Department of Health, as required in terms of the Regulations.⁵⁰⁷ However, it is recommended that the Director-General of the Department of Health consults with the relevant Provincial Department of Mineral Resources and Energy and the relevant municipality before issuing a certificate of registration.

Furthermore, it is recommended that a community-based approach to mine hospital establishments is implemented. Mine-affected community members should be involved in the planning processes pertaining to the establishment of mine hospitals in their communities. The following procedure is proposed: before the Director-General of the Department of Health issues a certificate of registration, he or she should notify the relevant mine-affected community that an application for a certificate of need has been granted and that an application for a certificate of registration has been accepted in respect of a mine hospital. The Director-General should then call upon members of the relevant mine-affected community to submit their comments regarding the application. There should be regulations prescribing when and how the Director-General should notify a mine-affected community. If a person objects to the granting of a certificate of registration, the Director-General should refer the objection to the relevant Provincial Department of Mineral Resources and Energy and the relevant municipality to consider the objections and to advise the Minister thereon.

2.2 Transfer of Ownership and Management of Mine Hospitals

From the perspective of a mining company, if its mine hospital is no longer viable (for any of the reasons outlined in chapter 5),⁵⁰⁸ the ownership and management thereof may be transferred to another entity. This section outlines the proposed practices and procedures that a mining company can implement before, during, and after the transfer of ownership and management of its mine hospital.

The recommendation is that, when a mining company is faced with the decision of whether to transfer the ownership and management of its hospital to another entity, the company considers the potential economic, emotional, political, practical, and social impacts on the local

⁵⁰⁷ Section 2 of the Regulations.

⁵⁰⁸ See section 2 of ch 5 for the causes of mine hospital ownership and management transfers.

community.⁵⁰⁹ Ideally, the relevant stakeholders ought to be involved in this decision-making process through consultation and engagement.⁵¹⁰ These stakeholders include members of the local community, hospital patients, hospital employees, and the relevant government officials. Accordingly, the legislative framework should prescribe notification requirements to the relevant stakeholders informing them of the potential transfer of ownership and management of the mine hospital.

The NHA and the national Regulations do not prescribe stakeholder notification requirements for mine hospital ownership and management transfers. It is recommended that the legal framework for mine hospitals imposes stakeholder notification requirements on the transfer of the ownership and management of a mine hospital. For example, there should be regulations prescribing how the mining company should notify the relevant stakeholders of its intention to transfer the ownership and management of its hospital to another entity. This notice should include reasons for such a decision. The relevant stakeholders should also be informed of the proposed entity that will be receiving ownership and management of the mine hospital. The mining company should call upon the stakeholders to submit their comments regarding the mining company's intention to transfer ownership and management of the mine hospital within a specified period from the date of the notice.

Thereafter, it is recommended that the mining company consults with the relevant state authorities (such as the relevant municipality) to develop an ownership and management transfer process and plan.⁵¹¹ The establishment of an advisory group incorporating the stakeholders may be necessary to oversee the transfer process.⁵¹² The mining company should also take appropriate steps to ensure the continuity of accessible quality healthcare, employment opportunities, and procurement in the mine-affected community after the transfer. This can be achieved when a mining company transfers ownership and management of its hospital to a competent entity that is familiar with the community's expectations and the existing responsibilities of the mining

⁵⁰⁹ Rena van der Wal, France Bouthillette & Stephen J. Havlovic 'Recommendations for Managing Hospital Closure' (1998) 11 *Healthcare Management Forum* 4 at 12-17; and George M. Holmes & Sharita R. Thomas 'What Should Be the Scope of a Health Network's Obligation to Respond After a Hospital Closure?' (2019) 21 *AMA Journal of Ethics* 3 at 215-222.

⁵¹⁰ Sapna A. Narula, Muneer Ahmad Magry & Ashima Mahur 'Business-community engagement: A case of mining company in India' (2019) 2 *Business Strategy and Development* 4 at 315-331.

⁵¹¹ George M. Holmes & Sharita R. Thomas (2019) 21 *AMA Journal of Ethics* at 215-222.

⁵¹² George M. Holmes & Sharita R. Thomas (2019) 21 *AMA Journal of Ethics* at 215-222.

company. For example, the mining company's existing responsibilities may be in its Social and Labour Plan.⁵¹³

2.3 Mine Hospital Operations and Closures

Mining companies in South Africa must comply with the mine operation and closure requirements prescribed in the Mineral and Petroleum Resources Development Act (MPRDA).⁵¹⁴ Similarly, mining companies should operate or close their mine hospitals per principles and provisions prescribed in the MPRDA. This section incorporates provisions from the MPRDA into the proposed legal framework for mine hospital operations and closures.

The MPRDA requires the Minister of Mineral Resources and Energy, when considering an environmental management plan or environmental management programme, to consult with any state department which administers any law relating to matters affecting the environment.⁵¹⁵ A similar provision should be developed to impose consultative decision-making requirements by government departments in the context of mine hospitals. The recommendation is that the Minister of Mineral Resources and Energy, for example when considering a Social and Labour Plan involving the establishment of a mine hospital, is required to consult with other state departments. These other state departments may be administering laws relating to matters affecting the operation of a mine hospital (e.g. the Department of Health or the Department of Labour). This will ensure the implementation of the principle of co-operative government.⁵¹⁶

Further, it is recommended that a provision similar to section 45 of the MPRDA is introduced in the mine hospital context. The section 45 mechanism empowers the Minister of Mineral Resources and Energy to take urgent remedial action in cases where there has been environmental degradation and to recover the costs from mining companies.⁵¹⁷ Similarly, it is recommended that a legislative provision is developed to address situations where mine hospitals are suddenly transferred or closed and this results in the socio-economic consequences highlighted in chapter 5.⁵¹⁸ For example, a mining company is ordered by the Minister of Health

⁵¹³ See section 6.2 of ch 3 for a detailed discussion of the Social and Labour Plan.

⁵¹⁴ Sections 38-46 of the Mineral and Petroleum Resources Development Act 28 of 2002.

⁵¹⁵ Section 40 of the MPRDA.

⁵¹⁶ See Chapter 3 of the Constitution of the Republic of South Africa, 1996; Intergovernmental Relations Framework Act 13 of 2005; and Thokozani I. Nzimakwe 'Intergovernmental relations and cooperative governance: two sides of the same coin' (2015) 50 *Journal of Public Administration* 4 at 824-840.

⁵¹⁷ Section 45 of the MPRDA.

⁵¹⁸ See section 4 of ch 5.

or the Director-General to close its mine hospital because the hospital fails to comply with the conditions and requirements imposed in terms of the Regulations Governing Private Hospitals and Unattached Operating Theatre Units.⁵¹⁹ The sudden closure of a mine hospital will result in the termination of healthcare services and job losses. Therefore, the proposed legislative provision should empower the Minister of Health to take urgent action to transfer existing patients in critical condition to alternative healthcare institutions for short-term emergency care. The Minister of Health should also be empowered to take urgent action to provide immediate retrenchment packages to existing mine hospital employees. Thereafter, the Minister of Health should recover amounts equal to the funds necessary to implement these measures from the mining company.

The MPRDA requires an applicant for a prospecting right, mining right, or mining permit to make financial provision for the remediation of environmental damage.⁵²⁰ It is recommended that a similar financial provision is introduced in the context of mine hospitals for the remediation of potential socio-economic damages in mine-affected communities due to the mining company's fault. For example, the Director-General withdraws a mine hospital's certificate of need due to the inability or unwillingness of a mining company to comply with prescribed norms and standards for health establishments.⁵²¹ The recommendation is that an independent assessor, similar to the one prescribed in the MPRDA in the context of mining company's remediation of environmental damage, should be appointed by a mining company, the Department of Mineral Resources and Energy, or the Department of Health.⁵²² This independent assessor should be tasked with conducting an assessment to determine the appropriate financial provision.⁵²³ Further, it is recommended that the relevant department(s) is granted powers to use all or part of this financial provision to rehabilitate or manage any negative social or economic impacts of mine hospital closures. The financial provision should be used, for example, to convert the existing facilities into sustainable state-run hospitals or clinics. The primary purpose and importance of such a financial provision should be to ensure the continuity of healthcare services, employment, and economic growth in mine-affected communities.

⁵¹⁹ Regulation 18 of the Regulations Governing Private Hospitals and Unattached Operating Theatre Units; see section 3.2 of ch 3.

⁵²⁰ Section 41 of the MPRDA.

⁵²¹ Section 36(6) of the NHA.

⁵²² Section 41(4) of the MPRDA.

⁵²³ Section 41(4) of the MPRDA.

The South African legal framework does not provide closure procedures for mine hospitals specifically. The recommendation is that a certificate issuance process similar to that prescribed in the MPRDA is introduced in the context of mine hospitals.⁵²⁴ The MPRDA provides for the issuing of mine closure certificates to right and permit holders by the Minister of Mineral Resources and Energy.⁵²⁵ The Act further provides for the ‘transfer of environmental liabilities and responsibilities to a competent person’ after a closure certificate is issued.⁵²⁶

In the context of mine hospitals, the following procedure is proposed: a mining company should obtain a closure certificate (or an ownership and management transfer certificate) from the Director-General of the Department of Health and the Director-General of the Department of Mineral Resources and Energy. Similar to the mine hospital establishment process, the application process for a mine hospital closure (or transfer) certificate should be streamlined by presenting a mining company with a single application form to submit to the two departments and a single closure (or transfer) certificate representing the outcome of both departments. Therefore, the Department of Health and the Department of Mineral Resources and Energy ought to have concurrent power to grant a mine hospital closure (or transfer) certificate to a mining company.

It is also recommended that the legal framework provides for the transfer of socio-economic liabilities and responsibilities associated with mine hospital closures to a competent entity after a closure certificate is issued. In the case of mine hospital ownership and management transfers, the legal framework should provide for the transfer of the liabilities and responsibilities of a mine hospital to a competent entity nominated by the mining company. Furthermore, a mining company may apply for an ownership and management transfer or closure certificate based on a set of criteria prescribed in legislation. These criteria should include any of the reasons identified in chapter 5, such as the completion of a mining project or lack of financial resources to manage the hospital.⁵²⁷

⁵²⁴ Section 43 of the MPRDA.

⁵²⁵ Section 43 of the MPRDA.

⁵²⁶ Section 43(2) of the MPRDA.

⁵²⁷ See section 2 of ch 5.

2.4 Enforcement Agency

An independent enforcement agency should be established in terms of the relevant statute or regulation governing mine hospitals.⁵²⁸ This agency should be identified as the body responsible for ensuring that mining companies comply with the relevant legal provisions pertaining to mine hospitals. The agency should be tasked with, *inter alia*, ensuring the implementation of legislative procedures on mine hospital establishments, closures and ownership, and management transfers.

This agency should, for example, determine the compliance rates of mining companies with the legal procedures for mine hospital establishments, closures, and ownership and management transfers and prepare annual reports to the Minister of Health and Minister of Mineral Resources and Energy concerning its findings. It should report to the ministers any violations of the prescribed procedures.

The agency ought to advise the Minister of Health and the Minister of Mineral Resources and Energy on the procedures pertaining to mine hospital establishments, ownership and management transfers, and closures. It can also recommend to the ministers any amendments that should be made to the prescribed procedures. The agency can also propose new procedures to prevent or minimise the negative impacts of mine hospital closures and ownership and management transfers.

3. Strengthening Collaborations for Sustainable Management

Chapter 5 of the dissertation discussed cases where mining companies terminate the ownership and management of mine hospitals and the hospitals eventually collapse.⁵²⁹ This raises the concern as to whether it is beneficial for mining companies to establish mine hospitals that cannot be sustained by mine-affected communities in the long-term. Hence the legislative framework must emphasise the need to establish mine hospitals in mine-affected communities that can be sustained after a mining company terminates its ownership and management of the hospital.

All mining companies must develop, submit, and implement Social and Labour Plans (SLPs) to the Department of Mineral Resources and Energy and the respective local

⁵²⁸ Mohamed Jeebhay & Belinda Jacobs *South African Health Review* 5 ed (1999) 257-276.

⁵²⁹ See discussion in section 3 of ch 5.

municipalities in which they intend to operate.⁵³⁰ The purpose of an SLP, *inter alia*, is to promote the long-term viability of mine-affected communities through sustainable development.⁵³¹ Additionally, SLPs are meant to mitigate and manage the social and economic consequences emanating from the activities of mining companies.⁵³² A mining company that intends to establish a mine hospital should, for example, define strategies in its SLP to maintain the capacity of workplace-based healthcare services at a mine hospital whilst simultaneously providing healthcare services to the surrounding community.⁵³³ The Department of Mineral Resources and Energy ought to regularly monitor the enforcement of SLPs pertaining to mine hospitals. Mining companies should comply with their SLPs and punitive measures should be enforced in cases of non-compliance.⁵³⁴

Furthermore, there should be an intersectoral collaboration between the Department of Health and the Department of Mineral Resources and Energy at the national, provincial, and local levels of government.⁵³⁵ These intersectoral collaborations should facilitate the formulation of strategic plans about the sustainability of mine hospitals in mine-affected communities.⁵³⁶ These departments should investigate strategies for the collaboration between mine hospitals and other public or private hospitals to strengthen healthcare capacity in mine-affected communities.⁵³⁷ The collaborative ventures between mine hospitals and other private or public hospitals may include joint ventures, alliances, mergers, and acquisitions.⁵³⁸ Accordingly, local governments are encouraged to ensure that the development of mine hospitals in the areas over which they have jurisdiction are anchored through partnerships. This will ensure the long-term sustainability of mine hospitals, especially in cases where a mining company terminates its ownership and management of a mine hospital.

⁵³⁰ Section 23(e) of the MPRDA; and see section 5.2 of ch 3.

⁵³¹ *TIPS Annual Forum* Mpho Ndaba 'Defining a reliable Planning, Monitoring and Evaluation Framework for the implementation of a Mining Company's Social Licence to Operate: An honest approach to community development in South African mining jurisdictions' TIPS Annual Forum online 2016, available at <https://www.tips.org.za/research-archive/annual-forum-papers/2016/item/3151-defining-a-reliable-planning-monitoring-and-evaluation-framework-for-the-implementation-of-a-mining-company-s-licence-to-operate-a-honest-approach-to-community-development-in-south-african-mining-mpho-brian-ndaba-dpme> at 8, accessed 30 November 2019.

⁵³² Sihlangu Ngobese *Examining the socio-economic impact of mining on the livelihoods of Amajuba District Mining Communities* (unpublished LLM thesis, University of KwaZulu-Natal, 2015) at 44-55.

⁵³³ Mohamed Jeebhay & Belinda Jacobs *South African Health Review* 5 ed (1999) 257-276.

⁵³⁴ Sihlangu Ngobese *Examining the socio-economic impact of mining on the livelihoods of Amajuba District Mining Communities* (unpublished LLM thesis, University of KwaZulu-Natal, 2015) at 44-55.

⁵³⁵ See sections 7(2), 27(1), 27(2), 40, 41(1)(h); Part A of Schedule 4; and Part B of schedule 4 of the Constitution.

⁵³⁶ Mohamed Jeebhay & Belinda Jacobs *South African Health Review* 5 ed (1999) 257-276.

⁵³⁷ Mohamed Jeebhay & Belinda Jacobs *South African Health Review* 5 ed (1999) 257-276.

⁵³⁸ Mohamed Jeebhay & Belinda Jacobs *South African Health Review* 5 ed (1999) 257-276.

4. Improving Consultation Processes and Assessing Community Satisfaction

Legislation should regulate the consultation between local governments and mine-affected communities or mining companies and mine-affected communities in the context of mine hospitals. Legislative provisions should identify various proactive consultation methods to be adopted before mine hospital establishments or closures.⁵³⁹ For example, local governments and mining companies may be legally required at predetermined intervals to hold regular meetings and feedback sessions in mine-affected communities.⁵⁴⁰ The meetings and feedback sessions may serve as platforms to propose and inquire about mine hospital establishments, ownership and management transfers, and closures. However, the success of such consultation methods depends largely on whether the individuals involved constitute an accurate and balanced representation of the community in which a mine hospital will soon be established, its ownership and management transferred or closed.⁵⁴¹

Governments and mining companies typically have mechanisms in place to track their productivity and performances (such as annual reports or key performance indicators).⁵⁴² A similar mechanism should be developed by local governments and mining companies to assess the performance of existing mine hospitals in mine-affected communities. These assessments should cover all aspects of the mine hospital such as the accessibility, affordability, and quality of healthcare; the availability of employment opportunities, and the state of local procurement. The assessments should be comprehensive enough to capture the views of all impacted community members.⁵⁴³ To ensure transparency and accountability, the assessments should be accessible, easily understandable, and conducted regularly.⁵⁴⁴

⁵³⁹ Legal Resources Centre 'A Practical Guide for Mining-Affected Communities' available at https://cer.org.za/wp-content/uploads/2016/05/LRC-2016_Mining_affected_communities_Eng.pdf at 15-23, accessed 28 November 2019.

⁵⁴⁰ Sihlangu Ngobese *Examining the socio-economic impact of mining on the livelihoods of Amajuba District Mining Communities* (unpublished LLM thesis, University of KwaZulu-Natal, 2015) at 44-55.

⁵⁴¹ South African Human Rights Commission 'National Hearing on the Underlying Socio-economic Challenges of Mining-affected Communities in South Africa' available at <https://www.sahrc.org.za/home/21/files/SAHRC%20Mining%20communities%20report%20FINAL.pdf> at 60-71, accessed 28 November 2019.

⁵⁴² Sihlangu Ngobese *Examining the socio-economic impact of mining on the livelihoods of Amajuba District Mining Communities* (unpublished LLM thesis, University of KwaZulu-Natal, 2015) at 44-55.

⁵⁴³ Sihlangu Ngobese *Examining the socio-economic impact of mining on the livelihoods of Amajuba District Mining Communities* (unpublished LLM thesis, University of KwaZulu-Natal, 2015) at 44-55.

⁵⁴⁴ N. Coulson, P. Ledwaba & A. McCallum 'Building resilient company-community relationships: a preliminary observation of the thoughts and experiences of community relations practitioners across Africa' (2017) 117 *The Journal of the Southern African Institute of Mining and Metallurgy* at 7-12.

Thereafter, the feedback received from engagements with mine-affected communities before mine hospital establishments, ownership and management transfers, and closures, or during the operation of mine hospitals should be recorded, made public, and acted upon.⁵⁴⁵ Members of mine-affected communities must be assured that their feedback will directly influence the decisions made by mining companies and local governments.⁵⁴⁶ These consultation processes and community satisfaction assessments will establish a platform for open and transparent dialogue amongst mine-affected communities, mining companies, and local governments.⁵⁴⁷ The shared ownership of decisions will enhance accountability, reliability, and trust.⁵⁴⁸

Nevertheless, mining companies should not be expected to comply with all the requests made by mine-affected communities that will cause mine hospitals not to be financially viable and eventually close. Therefore, mining companies should inform mine-affected communities about operational requirements and financial viability. For example, mining companies can hold community workshops to teach or introduce to mine-affected community members the basic elements and technicalities of the mine hospital. This will enable mine-affected communities to make reasonable requests to mining companies and also enable mining companies to take reasonable measures within their available resources.

5. Mine Hospital Surveillance Systems and Data-Collections

A national database for mine hospitals could provide meaningful data on the location of mine hospitals (e.g. provincial trends), the approximate number of mine hospitals established, as well as details about mine hospital ownership and management transfers and closures. The national database could also capture the status and impact of existing mine hospitals across the country.

The development of this national database and reporting system is envisaged as a joint function of the Department of Mineral Resources and Energy and the Department of Health. These departments should prescribe categories of the kinds of data that should be included in the

⁵⁴⁵ N. Coulson, P. Ledwaba & A. McCallum (2017) 117 *The Journal of the Southern African Institute of Mining and Metallurgy* at 7-12.

⁵⁴⁶ Brid Walsh, Sien van der Plan & Paul Behrens 'The effect of community consultation on perceptions of a proposed mine: A case study from southeast Australia' (2017) 51 *Resources Policy* at 163-171.

⁵⁴⁷ Sihlangu Ngobese *Examining the socio-economic impact of mining on the livelihoods of Amajuba District Mining Communities* (unpublished LLM thesis, University of KwaZulu-Natal, 2015) at 44-55.

⁵⁴⁸ Brid Walsh, Sien van der Plan & Paul Behrens (2017) 51 *Resources Policy* at 163-171; and Sihlangu Ngobese *Examining the socio-economic impact of mining on the livelihoods of Amajuba District Mining Communities* (unpublished LLM thesis, University of KwaZulu-Natal, 2015) at 44-55.

national database as well as the format in which the data should be compiled or collected. For example, mining companies may be required to keep proper records of their mine hospitals' operations. Mining companies may also be required to prepare progress reports in a certain manner and at certain intervals to the relevant authorities in the Department of Mineral Resources and Energy and the Department of Health.

An effective reporting system will enable the government to develop policy interventions.⁵⁴⁹ For example, if mine hospitals are concentrated in a particular area, the policy interventions can ensure the equitable distribution of mine hospitals in different provinces. Further, the national reporting system can signal trends in the causes for mine hospital ownership and management transfers and closures. The policy interventions can introduce stricter rules for assessing the potential viability of mining companies before the establishment of mine hospitals.

6. Conclusion

Mining companies often establish mine hospitals that provide healthcare services and create employment opportunities in mine-affected communities.⁵⁵⁰ Mining companies can also potentially promote local procurement opportunities.⁵⁵¹ A regulatory framework must be developed to govern mine hospitals as institutions independent of traditional private hospitals and workplace-based healthcare systems. This chapter outlines numerous legislative provisions that ought to be developed to regulate the establishment and operation of mine hospitals in mine-affected communities.

Nonetheless, there are cases where the operation of a mine hospital is neither viable nor beneficial to a mining company.⁵⁵² In these cases, the ownership and management of the mine hospital need to be transferred to another competent entity or the hospital needs to be closed. Mining companies must balance the trade-off between viability and the provision of services fairly to ensure minimal negative impacts on mine-affected communities.⁵⁵³ This chapter outlines numerous legislative provisions that should be developed to mitigate the potential social

⁵⁴⁹ Shahieda Adams, Reno Morar, Tracy Kolbe-Alexander et al 'Health and Health Care in the Workplace' (2007) 2007 *South African Health Review* 1 at 103-121.

⁵⁵⁰ See, in general, ch 2 and s(s) 2 & 3 of ch 4.

⁵⁵¹ See section 4 of ch 4.

⁵⁵² Section 2 of ch 5.

⁵⁵³ George M. Holmes & Sharita R. Thomas (2019) 21 *AMA Journal of Ethics* at 215-222.

and economic costs of mine hospital ownership and management transfers or closures on mine-affected communities.

The chapter also highlights the need for a clear communication network amongst the relevant stakeholders (i.e. the government, mining companies, and mine-affected communities). The ideal and most equitable approach to mine hospital establishments, ownership, and management transfers or closures may be dependent on the unique circumstances of the mine-affected community.⁵⁵⁴ The appropriate approach can best be ascertained when all the relevant stakeholders are active participants in the decision-making process.⁵⁵⁵

⁵⁵⁴ George M. Holmes & Sharita R. Thomas (2019) 21 *AMA Journal of Ethics* at 215-222.

⁵⁵⁵ N. Coulson, P. Ledwaba & A. McCallum (2017) 117 *The Journal of the Southern African Institute of Mining and Metallurgy* at 7-12; and George M. Holmes & Sharita R. Thomas (2019) 21 *AMA Journal of Ethics* at 215-222.

Chapter 7: Conclusion

1. Introduction

This dissertation discusses the history, role, and functions of mine hospitals in mine-affected communities in South Africa. It examines the autonomy, accessibility, and affordability of mine hospitals as a healthcare delivery system. Mining companies establish and manage their own hospitals due to the remote nature of the areas in which they operate and the need to provide healthcare services to their employees.⁵⁵⁶

Health-related illnesses and diseases in the mining sector are not limited to mine employees. The health hazards of mining operations affect the dependants of mine employees and communities living near mine sites.⁵⁵⁷ As mentioned in Chapter 1,⁵⁵⁸ dependants of mine employees can contract infectious diseases such as tuberculosis from mine employees.⁵⁵⁹ Similarly, community members living close to mine sites can contract illnesses such as asthma through dust exposure.⁵⁶⁰ Mine hospitals often cater to the dependants of mine employees and mine-affected communities, thereby extending the access of individuals in rural and remote communities to affordable and quality healthcare.⁵⁶¹

The dissertation discusses the facilities and services that mine hospitals typically have.⁵⁶² Mine hospitals are usually established by mining companies with the financial resources to purchase expensive state-of-the-art medical equipment and drugs that treat a range of health conditions. Further, mine hospitals are often staffed with a diverse medical workforce.⁵⁶³

This dissertation examines the primary legislation established by the legislature to achieve the progressive realisation of the right to accessible healthcare nationally and specifically

⁵⁵⁶ See, in general, ch 2.

⁵⁵⁷ See annexure 2 to this dissertation for a table depicting the impact of mining activity on the health of surrounding community members.

⁵⁵⁸ See section 2 of ch 1.

⁵⁵⁹ See annexure 2 to this dissertation for a table depicting the impact of mining activity on the health of surrounding community members.

⁵⁶⁰ See annexure 2 to this dissertation for a table depicting the impact of mining activity on the health of surrounding community members.

⁵⁶¹ See, in general, ch 2.

⁵⁶² See section 3 of ch 2.

⁵⁶³ See, in general, ch 2.

in the mining sector,⁵⁶⁴ namely the National Health Act⁵⁶⁵ and the Mine Health and Safety Act.⁵⁶⁶ It also considered national regulations governing private hospitals, namely the Regulations Governing Private Hospitals and Unattached Operating Theatre Units.⁵⁶⁷ Chapter 3 described how the legal framework contributes to the comprehensiveness of healthcare provided by mine hospitals.

Mining companies that establish mine hospitals play an essential role in assisting the government in fulfilling its constitutional mandate to enable people to access healthcare services.⁵⁶⁸ The establishment of mine hospitals contributes to the development of health infrastructure in South Africa and reduces the demand for healthcare on an overburdened public healthcare system.⁵⁶⁹ However, it remains the primary responsibility of the government to ensure that South African citizens have access to healthcare and, within its available resources, to provide healthcare services to people who cannot afford healthcare.⁵⁷⁰ Mining companies should, however, only improve and supplement the capacity of the government, not subsume it.

Mine hospitals can also have positive socio-economic impacts on mine-affected communities beyond the development of health infrastructure.⁵⁷¹ The South African legal framework requires mining companies to contribute to the social and economic development of mine-affected communities.⁵⁷² The dissertation evaluates specific provisions of the Mineral and Petroleum Resources Development Act (MPRDA);⁵⁷³ and the Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry (Mining Charter)⁵⁷⁴ that provide a framework for meaningful and sustainable socio-economic development in the mining industry.⁵⁷⁵ Further, it discusses social principles and policies such as Corporate Social

⁵⁶⁴ See, in general, ch 3.

⁵⁶⁵ National Health Act 61 of 2003.

⁵⁶⁶ Mine Health and Safety Act 29 of 1996.

⁵⁶⁷ Regulations Governing Private Hospitals and Unattached Operating Theatre Units (as amended) in GN 158 of 1 February 1980; see section 4 of chapter 5.

⁵⁶⁸ See section 3 of ch 3.

⁵⁶⁹ See ch 2.

⁵⁷⁰ See section 3 of ch 3.

⁵⁷¹ See ch 4.

⁵⁷² See section 5 of ch 3.

⁵⁷³ Mineral and Petroleum Resources Development Act 28 of 2002.

⁵⁷⁴ Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry, 2018.

⁵⁷⁵ A. Mitchell, L. Moalusi & M. van der Want (2012) 112 *The Journal of The Southern African Institute of Mining and Metallurgy* at 154; K. Thambi 'Mining companies attain relief through deductions on infrastructure relating to Social and Labour Plans: A case of the cart before the horse?' (2019) 119 *The Journal of The Southern African Institute of Mining and Metallurgy* at 481; and G. Mitchell 'Making sense of transformation claims in the South African mining industry' (2013) 113 *The Journal of The Southern African Institute of Mining and Metallurgy* 1 at 40-43.

Responsibility,⁵⁷⁶ the Social License to Operate,⁵⁷⁷ the Social and Labour Plan.⁵⁷⁸ These social principles and policies require mining companies to consider the interests of mine-affected communities and contribute to the socio-economic development of these communities.⁵⁷⁹ A mine hospital is an example of a development initiative of a mining company to develop health infrastructure, provide healthcare services, and create employment and procurement opportunities in mine-affected communities.

This dissertation highlighted several shortcomings in the current legal framework for mine hospitals, mainly because mine hospitals are regulated in the same manner as general private hospitals and standard workplace-based healthcare systems. It highlighted the unique role, function, and socio-economic impacts of mine hospitals in South African society, and asserted that a lack of specific regulation amounts to mine hospitals being in a regulatory twilight zone which leaves too many issues unaddressed.

Mining companies may elect to close their mine hospitals or transfer the ownership and management of their mine hospitals for specific reasons.⁵⁸⁰ This research identifies the potential causes of mine hospital closures and ownership and management transfers.⁵⁸¹ For example, a mining company may close or transfer its mine hospital because it lacks the financial resources to run its hospital.⁵⁸² Where mining companies transfer the ownership and management of their hospitals to other entities or close their hospitals, it can have negative socio-economic effects on mine-affected communities.⁵⁸³ The dissertation analyses the socio-economic consequences of mine hospital closures and ownership and management transfers.⁵⁸⁴ Some of these consequences include the poor management of mine hospitals, the suspension or termination of healthcare services, and job losses.

This dissertation recommends that certain aspects of mine hospitals are governed differently from general private hospitals and standard workplace-based systems.⁵⁸⁵ It proposes legislative provisions to be incorporated into the legal framework for mine hospitals. The

⁵⁷⁶ See section 6.1 of ch 3.

⁵⁷⁷ See section 6.3 of ch 3.

⁵⁷⁸ Section 6.3 of ch 3.

⁵⁷⁹ See section 5 of ch 3.

⁵⁸⁰ See, in general, ch 5.

⁵⁸¹ See section 2 of ch 5.

⁵⁸² See, in general, ch 5.

⁵⁸³ See section 4 of ch 5.

⁵⁸⁴ See section 4 of ch 5.

⁵⁸⁵ See, in general, ch 6.

provisions pertain to the establishment, ownership and management transfer, and closure of mine hospitals in mine-affected communities.

This research proposes that the Department of Health and the Department of Mineral Resources and Energy ought to have concurrent powers to oversee mine hospital establishment, ownership and management transfer, and closure procedures. For example, mining companies should obtain certificates of need and registration from the Department of Health and the Department of Mineral Resources and Energy through streamlined application processes. Additionally, mining companies ought to obtain mine hospital closure and transfer certificates from the Department of Health and the Department of Mineral Resources and Energy through streamlined application processes.

The relevant stakeholders (i.e. the government, mining companies, and local communities) should also be involved in the decision-making processes before mine hospital transfers and closures. This involvement should be through consultation and engagement.⁵⁸⁶ The consultation and engagement processes can be improved through regular meetings and feedback sessions in mine-affected communities.

2. Further Research and Examination

The value of this study is in its ability to raise awareness, among stakeholders including the government and mining companies, in understanding the effects that mine hospital ownership and management transfers and closures have on mine-affected communities. However, the problem addressed in this dissertation will benefit from further research and analysis, using case studies in its methodology. Mine hospitals must be investigated within their real-life context. The case studies should be focused on specific mine hospitals in mine-affected communities. There should be in-depth, long-term investigations of mine hospital establishments, ownership and management transfers and closures to explore the socio-economic impacts on mine-affected communities. The purpose of such a broader study could be to examine and compare scenarios in different communities and around different hospitals, to establish best practice guidelines that could inform law and policy-making. This study can assist the South African government, particularly the Department of Mineral Resources and Energy and the Department of Health in

⁵⁸⁶ See section 4 of ch 6.

establishing a legal framework for the sustainable development and management of mine hospitals.

Annexure 1

Name of Statute	Government department responsible for enforcement	Function of Statute
Occupational Health and Safety Act. ⁵⁸⁷	Department of Labour	Provides for the protection of workers from health and safety hazards in the workplace. Outlines the responsibilities of employers to ensure that the workplace is safe and healthy.
Mine Health and Safety Act. ⁵⁸⁸	Department of Mineral Resources and Energy	Provides for the protection of the health and safety of workers in the mining sector.
Occupational Diseases in Mines and Works Act. ⁵⁸⁹	Department of Health	Provides for the compensation of occupational lung diseases in mines and quarries.
Compensation for Occupational Injuries and Diseases Act. ⁵⁹⁰	Department of Labour	Provides for medical cover and compensation of occupational injuries and diseases arising from workplace exposures.
National Health Act. ⁵⁹¹	Department of Health	Provides for the rights and duties of healthcare providers, healthcare workers, health establishments, and users. Outlines the responsibility of the provincial department of health to provide occupational health care.
Medicines and Related Substances Act. ⁵⁹²	Department of Health	Provides for the licensing of certain persons (such as nurses and medical practitioners) to dispense schedule 1-4 substances in occupational health service systems.
Labour Relations Act. ⁵⁹³	Department of Labour	Provides for the establishment of bargaining councils that serve to create and manage funds and schemes (such as medical aid schemes) in the workplace for the benefit of members. Outlines the procedure for dealing with ill-health causing incapacity at the workplace.

Annexure 1: Legislation Pertaining to Occupational Healthcare Provision and Compensation

⁵⁸⁷ Occupational Health and Safety Act 85 of 1993.

⁵⁸⁸ Mine Health and Safety Act 29 of 1996.

⁵⁸⁹ Occupational Diseases in Mines and Works Act 78 of 1973.

⁵⁹⁰ Compensation for Occupational Injuries and Diseases Act 130 of 1993.

⁵⁹¹ National Health Act 61 of 2003.

⁵⁹² Medicines and Related Substances Act.

⁵⁹³ Labour Relations Act 66 of 1995.

Annexure 2

Mining Activity	Example of Health Hazards	Potential impact on communities
Coal mining	Releasing toxic gases (e.g. carbon dioxide, nitrogen and sulphur oxide) ⁵⁹⁴ Contaminating water sources (e.g. acid mine drainage) ⁵⁹⁵	Lung infection and diseases e.g. silicosis ⁵⁹⁶ and tuberculosis ⁵⁹⁷
Cobalt mining	Production of significant amounts of dust and fumes. ⁵⁹⁸	Lung infection and diseases e.g. asthma ⁵⁹⁹ and pneumonia. ⁶⁰⁰ Skin rashes ⁶⁰¹
Copper mining	Contamination of water sources (e.g. Acid Mine Drainage). ⁶⁰²	Abdominal pain, ⁶⁰³ diarrhoea ⁶⁰⁴ and vomiting ⁶⁰⁵
Gold mining	Production of arsenic ⁶⁰⁶ and silica dust. ⁶⁰⁷	Bladder, ⁶⁰⁸ lung ⁶⁰⁹ and skin cancer. ⁶¹⁰ Lung infection and diseases e.g. silicosis ⁶¹¹ and tuberculosis. ⁶¹²
Uranium mining	Release of toxic gas radon. ⁶¹³	Leukaemia, ⁶¹⁴ lung cancer ⁶¹⁵ and stomach cancer. ⁶¹⁶

Annexure 2: Health Hazards and Impacts Associated with Different Types of Mining Activity

⁵⁹⁴ *Regional Network for Equity in Health in East and Southern Africa* Mining and health: A Health Literacy Module' (2018) at 4.

⁵⁹⁵ Acid Mine Drainage is a form of water pollution due to the outflow of acidic water from mine sites into water sources. *Regional Network for Equity in Health in East and Southern Africa* Mining and health: A Health Literacy Module' (2018) at 4.

⁵⁹⁶ Jill Murray, Tony Davies & David Rees (2011) 32 *Journal of Public Health Policy* at 65-79.

⁵⁹⁷ Murray et al (2011) 32 *Journal of Public Health Policy* at 65-79.

⁵⁹⁸ *Regional Network for Equity in Health in East and Southern Africa* Mining and health: A Health Literacy Module' (2018) at 4.

⁵⁹⁹ Shahjadi Hisan Farjan, Nazmul Huda & M.A. Parvez Mahmud 'Life cycle assessment of cobalt extraction process' (2019) 18 *Journal of Sustainable Mining* 3 at 150.

⁶⁰⁰ Traci N. Adams, Yasmeen M. Butt & Kiran Batra 'Cobalt related interstitial lung disease' (2017) 129 *Respiratory Medicine* at 91-97; Farjan et al (2019) 18 *Journal of Sustainable Mining* at 150.

⁶⁰¹ *Regional Network for Equity in Health in East and Southern Africa* Mining and health: A Health Literacy Module' (2018) at 4.

⁶⁰² Ata Akcil & Soner Koldas 'Acid Mine Drainage (AMD): causes, treatment and case studies' (2006) 14 *Journal of Cleaner Production* 12-13 at 1139-1145.

⁶⁰³ F. Pizarro, M. Olivares & V. Gidi et al 'The Gastrointestinal Tract and Acute Effects of Copper in Drinking Water and Beverages' (1999) 14 *Reviews of Environmental Health* 4 at 231-238.

⁶⁰⁴ Pizarro et al (1999) 14 *Reviews of Environmental Health* at 231-238.

⁶⁰⁵ Pizarro et al (1999) 14 *Reviews of Environmental Health* at 231-238.

⁶⁰⁶ R.G. Robins & LD. Jayaweera 'Arsenic in Gold Processing' (1999) 9 *Mineral Processing and Extractive Metallurgy Review* 1-4 at 255-271.

⁶⁰⁷ Eva Hnizdo, Jill Murray & Sarah Klempman 'Lung cancer in relation to exposure to silica dust, silicosis and uranium production in South African gold miners' (1997) 52 *Thorax* 3 at 271-275

⁶⁰⁸ *Regional Network for Equity in Health in East and Southern Africa* Mining and health: A Health Literacy Module' (2018) at 4.

⁶⁰⁹ Hnizdo et al (1997) 52 *Thorax* at 271-275

⁶¹⁰ *Regional Network for Equity in Health in East and Southern Africa* Mining and health: A Health Literacy Module' (2018) at 4.

⁶¹¹ Hnizdo et al (1997) 52 *Thorax* at 271-275

⁶¹² J. Tewatnaude, Rodney I Ehrlich & Gavin J Churchyard et al 'Tuberculosis and silica exposure in South African gold miners' (2006) 63 *Occupational and Environmental Medicine* 3 at 187-192.

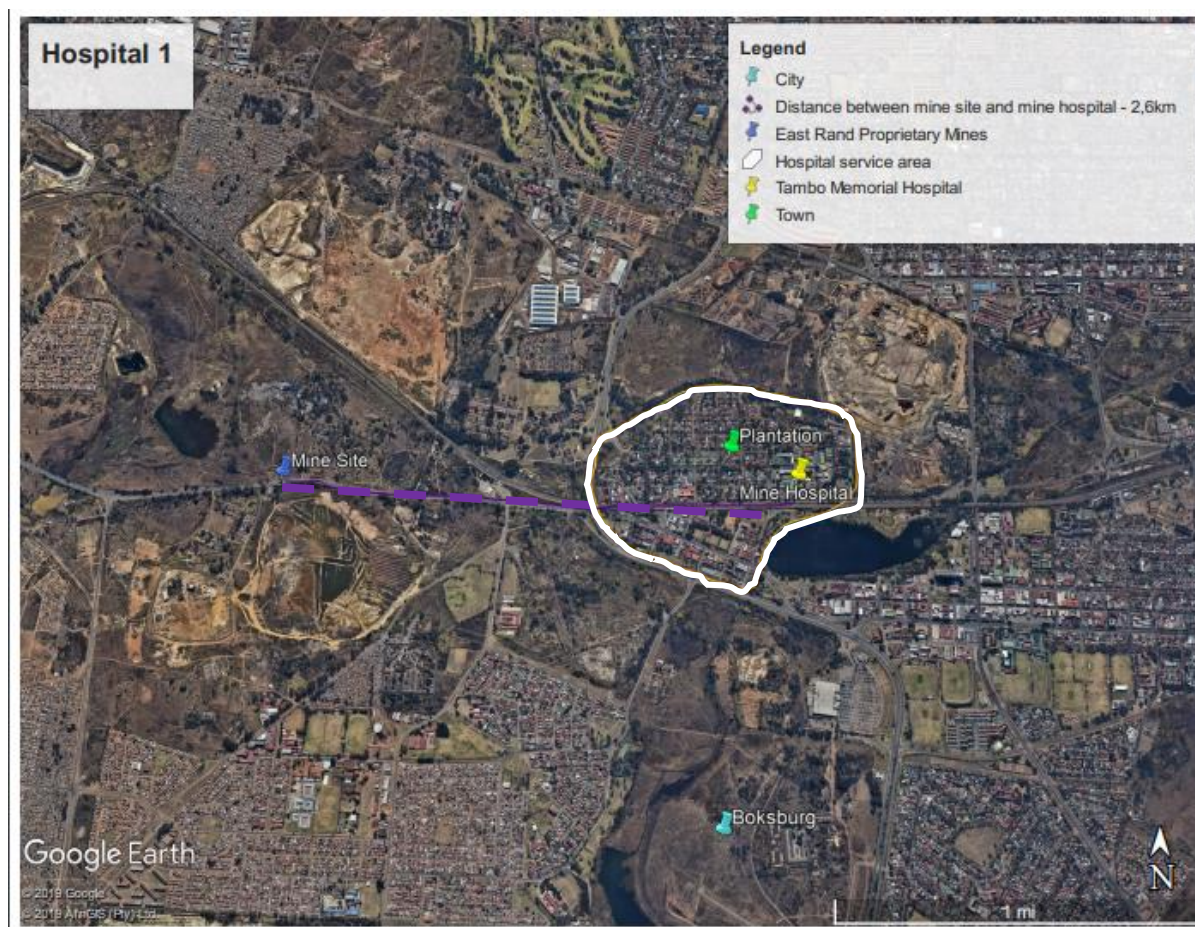
⁶¹³ Patitapaban Sahu, Durga Charan Panigrahi & Devi Prasad Mishra 'Sources of Radon and its Measurement Techniques in Underground Uranium Mines – An Overview' (2014) 13 *Journal of Sustainable Mining* 3 at 11-18.

⁶¹⁴ Mustafa Al-Zoughool 'Health effects of radon: A review of the literature' (2009) 85 *International Journal of Radiation Biology* 1 at 57-69.

⁶¹⁵ Al-Zoughool (2009) 85 *International Journal of Radiation Biology* at 57-69.

⁶¹⁶ *Regional Network for Equity in Health in East and Southern Africa* Mining and health: A Health Literacy Module' (2018) at 4.

Annexure 3



Annexure 3: Approximate Location of Tambo Memorial Hospital in Relation to the Mine Site and the Service Area⁶¹⁷

⁶¹⁷ Google Earth V 7.3.2.5487 (05-02-2020) Boksburg, Gauteng Province 26°13'08.92" S, 28°14'09.34" E AfriGIS (Pty) Ltd 2019 & Google 2019.

Annexure 4



Annexure 4: Approximate Location of New Kleinfontein Hospital in Relation to the Mine Site and the Service Area⁶¹⁸

⁶¹⁸ Google Earth V 7.3.2.5487 (05-02-2020) Benoni, Gauteng Province 26°11'09.86" S 28°19'23.29"E Landsat/Copernicus 2019.

Annexure 5



Annexure 5: Approximate Location of Premier Mine Hospital in Relation to the Mine Site and the Service Area⁶¹⁹

⁶¹⁹ Google Earth V 7.3.2.5487 (05-02-2020) Cullinan, Gauteng Province 25°39'29.65"S 28°30'25.25"E Maxar Technologies 2020.

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